THE IMPACT OF CRIME ON SMALL BUSINESS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON

URBAN AND RURAL ECONOMIC DEVELOPMENT

OF THE

COMMITTEE ON SMALL BUSINESS

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

THE IMPACT OF CRIME ON SMALL BUSINESS

PART 1

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THE IMPACT OF CRIME ON SMALL BUSINESS

MONDAY, AUGUST 16, 1982

U.S. SENATE,
SUBCOMMITTEE ON URBAN AND
RURAL ECONOMIC DEVELOPMENT,
COMMITTEE ON SMALL BUSINESS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in the second floor courtroom, U.S. Court of International Trade, 1 Federal Plaza, New York City, Hon. Alfonse M. D'Amato (chairman of the subcommittee) presiding.

Present: Senator D'Amato.

Staff present: R. Michael Haynes, chief counsel; from the staff of Senator D'Amato, Bruce Ray, and Gerry Lewi.

Also present: Jeffrey Harris, Deputy Associate Attorney General, Criminal Division, U.S. Department of Justice.

STATEMENT OF HON. ALFONSE M. D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON URBAN AND RURAL ECONOMIC DEVELOPMENT OF THE COMMITTEE ON SMALL BUSINESS

Senator D'AMATO. The hearing will come to order.

Good morning. This is a hearing on the future of small business in the face of urban crime, before the Senate Small Business Subcommittee on Urban and Rural Economic Development. I have with me today the Deputy Associate Attorney General in charge of the Criminal Division, Mr. Jeff Harris.

In addition, I would like to thank the committee members, the staff members of the Senate Small Business Committee, Prof. Bruce Ray of my staff, and Mr. John Zagame of my staff for their tireless efforts in putting together this first of a series of hearings that we will be conducting, not only here in New York State but indeed throughout the Nation. I would like to thank them also for the work that they are already beginning to undertake in developing a comprehensive legislative program to deal with the problems of our prisons, the inadequacy of prisons, because it makes little sense to arrest, to convict, and then not have the adequate facilities for the prison population, particularly the violent criminal who today makes our streets unsafe.

I welcome Commissioner McGuire and Commissioner Hynes and our other witnesses to this hearing.

Ninety-six percent of all businesses in our country are small businesses. They account for 43 percent of our gross national product and are the source of two-thirds of all new jobs. Small businesses are the incubator for new ideas and creative technologies and broadened economic opportunities; 45 percent of our work force in New York City is employed by 183,000 small businesses: mom and pop stores, small industrial plants, suppliers of thousands of various goods and services which give life and color to our city, not to mention the billions of dollars in taxes and employment opportunities which result.

Between 1976 and 1980, 6,000 small businesses in New York City went out of existence. The incessant, escalating battle against crime was most certainly a factor in their demise. Crime in many parts of the city is so bad that insurance companies will no longer cover businesses located in these areas. The Federal crime insurance program was initiated to provide some economic protection for more than 10,000 small businesses who otherwise could no longer obtain private insurance. The shutters and grates, buzzers and alarms, cashier cages and locked merchandise display cases so common in New York bear ample testimony to the manner in which people must conduct business due to the threat of crime, and I might add that that is not only confined to New York, not only to our urban centers but to our suburban communities as well.

A 1976 Commerce Department report, "The Cost of Crime Against Business," concluded that small business suffers severely from crime. More recent reports indicate that in 1980 over 533,000 robberies in the United States were reported in the "Uniform Crime Reports," and that 73,000 commercial establishments lost an estimated $71.6 million as a result of crime. If we were to combine the staggering statistics, including gasoline station robberies, convenience store robberies, and nonresident burglaries, we would be well over $1 billion in losses.

I believe it is time that we recognize that there is another business in America, and it is no longer a small business. Its purveyor keeps no records and pays no taxes, pays no bills, has no obligation to Labor Department regulations, health department inspectors, or the pressure of competition in difficult economic times. For them the profits are high and the risk amazingly low, and the opportunities practically unlimited. I am talking about the business of crime.

The shocking fact of the matter is that out of 100 crimes, the chances are that 15 to 20 percent of the perpetrators will be arrested, only 5 convicted, and only 1 will ever serve any time in prison.

Despite the assurance in the preamble of the Constitution that one of the first purposes of our Government is to insure domestic tranquility," we are not blessed with peace. Violence and the fear of violence grips our society. According to the Federal Bureau of Investigation, every 23 minutes someone is being murdered in the United States; every 6 minutes a woman is being raped; there is a robbery every 58 seconds; a burglary takes place every 8 seconds. By the time this hearing is over, 12 more citizens will lie dead in their homes, in their businesses, or on our streets.

Crime pays, for the violent lawbreaker again is aware that the odds are in his or her favor and, as I mentioned, that only 1 out of 100 will ever serve any time in a prison. While the preliminary or primary responsibility for the administration of criminal justice rests with the States and local governments, all levels of government, including the Federal Government, have a responsibility to deal with the crime menace before it breaks more of the small businesses that are the backbone of our economy, before more victims are added to the horrendous statistics of crime, and before it irreparably damages the fabric of our society.

Domestic tranquility means more than freedom from foreign invasion or domestic insurrection. It means safety in our communities and the security for our businesses. It means peace for a society where the rule of law has been subverted by violence and where freedom from fear is slipping further away from all of us.

Therefore, this committee has embarked upon what I think is a most important undertaking: To examine the various aspects of crime; to work together with State and local officials; to speak to the victims of crime in terms of the horrendous impact it has made upon them, their families, and our community; and to see to it that we use all of the resources necessary to win this battle. I want to work with our local law enforcement officers in seeing to it that they have the necessary resources so that we can keep our communities free from this burden that is so perverse and pervasive in every way, even in our homes.

Before calling our first panel of witnesses, I would like to submit for the record the opening statement of Senator Nunn, who is unable to be here today but who shares my concern about the need for tough anticrime legislation and hearings to explore this area of concern.

[The prepared statement of Senator Nunn follows:]

STATEMENT BY SENATOR SAM NUNN

Hearings before the
U.S. SENATE COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON URBAN AND RURAL ECONOMIC DEVELOPMENT
on
THE FUTURE OF SMALL BUSINESS IN THE FACE OF URBAN CRIME
New York, New York
August 16, 1982

Mr. Chairman, in poll after poll, survey after survey, crime ranks along with the economy and national defense as issues of major concern to the American public as a whole, and to the small business community in particular.

Unlike the myriad of trade associations and industries which leave no stone unturned on tax or defense issues, there is precious little special interest activity in support of tough, anti-crime legislation. For this reason, I believe that any hearings which spotlight the impact of crime in America are extremely important in generating public support for improved law enforcement, and I compliment Senator D'Amato for his leadership in chairing this continuation of the Senate Small Business Committee's efforts to focus attention on how crime effects our Nation's small businesses.

The role of the Federal Government in fighting street crime, which is of major concern to many small businesses, admittedly is limited under our constitutional system of government. Past federal efforts to fight street crime directly -- such as by having federal drug enforcement agents making street busts -- have proved to be unsuccessful, and I believe it would be a serious misallocation of our national government's limited resources for it to assume the role of local law enforcement agencies.

Nevertheless, the Federal Government does have an appropriate, and significant, function in law enforcement, and important legislative and administrative improvements are being made in its ability to perform this function.

Take drug enforcement, for example. It has been estimated that the illegal drug trade in this country is a $100 billion or more a year "industry". A significant portion of the street crime, such as robberies of small businesses, can be attributed directly to the drug problem, and especially to addicts stealing in order to satisfy their habits. One study has shown that 237 drug addicts were responsible for more than 500,000 crimes over an 11-year period in just one northeastern city.

The Federal Government can best fight the drug problem by interdicting narcotics before they ever reach the streets, by cooperating with foreign countries to stop illegal drugs at their source, and by concentrating on the hierarchy of the criminal syndicates which produce, transport and distribute the drugs. These specific efforts have recently been strengthened, I am proud to say, by significant legislation which I either introduced, or cosponsored, in the Senate.

One of the new laws, which I introduced, now permits our armed services to render limited but invaluable assistance -- especially intelligence information -- to civilian drug enforcement agencies. Assistance by the Navy and Air Force already is having an impact on the flow of drugs into south Florida from Latin America.

Another law, which was introduced by Senator Lawton Chiles of Florida and me, lifts a prohibition on the use of U.S. foreign assistance funds to spray overseas marijuana and poppy fields with the herbicide Paraquat. When Paraquat was used in Mexico in the mid-1970s, the flow of heroin and marijuana from that country was very nearly halted. This action resulted in Columbia becoming the new chief source of marijuana for the U.S. market; with this legislation, we are now able to assist the Colombian government in taking similar action there.

A third important bill I introduced, which was passed recently by the Senate as an amendment to the Tax Equity Act, would permit, and frankly encourage, the Internal Revenue Service to rejoin the fight against high-level narcotics traffickers and organized crime figures. The people at the top of the syndicates seldom participate directly in the actual criminal activity, but they almost always touch the money. Consequently, the IRS is the one Federal agency they fear the most -- especially given the enviable record the IRS has built in cracking down on such notorious gangsters as Al Capone and Frank Costello.

However, in 1976, Congress passed a law which has been used by the IRS as an excuse to stay out of the fight. The new legislation, when enacted, would restore the IRS's cooperative role in federal law enforcement without jeopardizing the privacy of individual taxpayer returns, or leading to the potential of "Watergate-like" abuses in the future. Getting the IRS back on the trail of the criminals' cash flow is a very important step in our National crime stopper effort.

These are important reforms in our federal law enforcement efforts, and they help to emphasize another important function of the Federal Government in this area -- to set an example for our state and local governments. The "Violent Crime and Drug Enforcement Improvements Act of 1982", which the Senate has agreed to consider next month, contains several additional proposals of mine which I believe would set such an example.

This bill would provide, for example, tougher, more uniform sentences for federal narcotics and violent crime offenders. It would also make it less likely that persons accused of narcotics violations would be able to escape justice merely by posting bail -- an important reform since bail is often a mere "business expense" for wealthy drug dealers and importers. In addition, federal jurisdiction would be extended to certain murder-for-hire cases, enabling the FBI to enter an area that is growing in frequency among both narcotics, and traditional organized crime rings. The bill would also increase the level of protection available under the federal assault statute to government witnesses and informants, as well as to Federal law enforcement officers and their families.

In the area of labor-management corruption, the Senate recently passed two bills which will put some teeth into efforts to clean up certain unions and to protect the rank-and-file members from illegal activities by both union officials and management. One of these proposals increases the penalties for labor-management kickbacks and payoffs, and provides for the immediate suspension from office of union officials upon their conviction of union-related crimes. Under present law, even though convicted, union officials are able to stay in office pending the lengthy appeals process. The other bill would make it more difficult for longshoremen's and dock worker's union officials to engage in workmen's compensation frauds.

Taken together, all these measures represent the Senate's most massive attack on crime in more than a decade. This package of legislation, some having just passed the Senate, others that will hopefully pass shortly, is the result of more than five years work by me and many of my colleagues, especially those who serve with me on the Senate Permanent Subcommittee on Investigations. But the legislative road has not been easy, and it has taken a great deal of effort to get this far.

There is much more to be done -- at all levels of government -- if the crime rate in America is to be reversed. If we are to be successful in the long run, we must have the active support of all law-abiding citizens -- and especially of the thousands of small business owners who are victimized by crime each year. I strongly encourage our important small business community to work just as hard for anti-crime legislation as it does for beneficial economic legislation. It is only through such support that advances can be made in the war on crime.

While I regret that I am unable to attend these hearings, I look forward to reviewing the testimony and to working with Senator D'Amato and the other members of the Small Business Committee in developing further reforms in the criminal law area, particularly as they affect our Nation's small business community.

Senator D'AMATO. I now would like to call as our first panel Commissioner McGuire and Commissioner Hynes. I welcome you here to this hearing. Commissioner McGuire.

STATEMENT OF ROBERT McGUIRE, POLICE COMMISSIONER, POLICE DEPARTMENT OF THE CITY OF NEW YORK, ACCOMPANIED BY KENNETH CONBOY, DEPUTY ASSISTANT COMMISSIONER FOR LEGAL AFFAIRS

Mr. McGUIRE. Thank you, Senator. I think your statement more eloquently than mine summed up the picture of crime in this country and its enormous impact on not only the citizens but on businesses, and specifically with reference to this morning's hearing, small businesses in the United States. I believe everything that you said is accurate. I also believe that it is absolutely essential that the Federal Government support the efforts of local law enforcement and local municipalities with respect to combating crime.

We have not sat idly by during the past several years as crime has surged and done nothing about it in New York. I have submitted a formal statement to you. I will not read from it but merely allude to some of its contents.

Senator D'AMATO. That statement will be included in the record as if read in its entirety.

Mr. McGUIRE. Thank you.

During the past several years New York, as with other urban areas, has seen a substantial increase in the amount of crime, especially street crime, crime that affects the quality of people's lives and their determination as to whether they are going to remain in a city, their determination as to whether they are going to conduct their business affairs in a city. A couple of years ago, in response to this problem, the New York City Police Department initiated two different programs on the dual theory that with vastly reduced resources we had to, one, combat the career criminal who we believed was committing a disproportionate amount of the violent street crime that was taking place, and the studies that we have looked at bear out that a relatively small number of career criminals commit a disproportionately large amount of the crime. That is not to say that the numbers of those criminals are small. The fact is, it is an appallingly large number of people who, given the opportunity, possess the inclination to commit a serious crime. Nonetheless, they can be identified, they can be statused, and they can be gone after in a very, very aggressive and coordinated way by law enforcement.

In this connection we initiated a pilot project with the Manhattan DA's office a couple of years ago, whereby we identified career criminals by name. There were approximately 1,100 at the time, and the study revealed that we arrested about 60 percent of those people. We engaged in aggressive surveillance. We also engaged in aggressive investigation of any case in which they were arrested, and the results of that program were extremely encouraging. Given the resource limitations in the system, the district attorneys and the police working together were able to indict far more of these people than of the general criminal population. Substantially better conviction rates were obtained and substantially longer prison sentences were imposed on this category of violent criminal.

That was one part of the New York City Police Department's program. We then went citywide with that a year ago. We believe that that, along with the establishment of a central robbery unit—and Inspector Jim Trainer, who is in charge of that, will be testifying before your committee—has gone a long way toward reducing street crime in New York City. We are extremely encouraged that during the past 7 months of this year, the first 7 months of this year, all crimes with the exception of motor vehicle theft, I believe, are down. Robberies and burglaries are down rather substantially, and that evidence is an ongoing trend that we are extremely encouraged by.

The other patrol strategy that we employed starting in 1978 on a modest level, again because of resource constraints, was to reestablish foot patrol, uniformed foot patrol in New York City, reinventing the wheel, if you will. However, the fact is, we had lost what a lot of our citizens thought was a very, very important part of policing—a visible, uniformed cop on the street, walking the beat, talking to shopowners, reassuring them, seeing if they had any problems. To the extent possible with our manpower, we have reestablished what we call neighborhood stabilization units composed of young, uniformed police officers whose main job is to walk a beat in our residential and business communities and to assist the rest of the department's apparatus in controlling and reducing crime.

We have been extremely encouraged by the results, not only the appearance results or the perception results that come from talking to the citizens, which we feel are very important, but also the fact that crimes have been significantly reduced in the areas where the foot cops are walking.

Those two strategies, taken together, have enabled us not only to survive but to start the long fight back. We were reduced approximately 9,000 police officers by virtue of the fiscal crisis. At the same time, the Federal Government began to retrench in terms of its fiscal problems. LEAA was essentially eliminated and the financial support coming from the Federal Government essentially eliminated also, and so we have been thrown back on our own resources at a time when the local municipalities did not have sufficient resources.

Nonetheless, the New York City Police Department is being rebuilt. We are in the process of hiring approximately 3,000 police officers in the past 2 years, which is a very, very encouraging trend for us.

We share your view that crime is big business today, perhaps the biggest business around, that crime pays, perhaps in a period of economic downturn one of the few businesses that does pay. There is little penalty attached to the commission of most crimes. I note in passing the area of auto theft, where in New York we had 100,000 cars stolen last year and something like 14 people in State prison for this area of crime or this type of crime. I think that to the extent that society not only permits but trivializes serious criminal conduct, and does not respond aggressively with apprehension, prosecution, and incarceration where necessary, substantial incarceration where necessary, you will reap what you sow, and I think that is what has happened in this country in the last 20 or 25 years. We have given off all kinds of signals to people that indeed they can get away with crime.

I think at the same time that we ought to be looking for jobs for our young people, we have to talk about serious incarceration and a serious approach to what, as you stated, Senator, is certainly the major infliction domestically in the United States today, which is the realistic perception by people that they have to be very, very careful or they may be victimized by some type of crime.

Therefore, I thank you for inviting me here this morning. We in New York certainly are prepared to work with you on every level to combat this growing menace, both as it affects all of our citizens and specifically with reference to your concerns this morning, the future of small businesses in this city and every other large city in the United States.

Thank you very much.

Senator D'AMATO. Thank you, commissioner.

Commissioner Hynes.

STATEMENT OF CHARLES J. HYNES, FIRE COMMISSIONER, FIRE DEPARTMENT OF THE CITY OF NEW YORK

Mr. HYNES. Senator D'Amato, I thank you for inviting me this morning. Now with your permission I would like to read a portion of my statement and submit the remainder for the record.

Mr. Chairman, unfortunately too few people realize how serious the problem of arson is in this country. It is one of America's most tragic and costly crimes. As many as 1,000 people die and another 15,000 are injured each year in the United States as a result of arson fires. Its cost is astounding—$1.8 billion annually in direct property loss, and the indirect cost has been estimated to be as high as $15 billion annually.

Arson has been growing at an alarming rate over the last decade. During this period incidents of arson have quadrupled and the dollar loss over the same period has increased tenfold. Arson accounts for 25 percent of all residential fires and one-quarter to one-third of all fire insurance premiums.

In New York City the fire department's bureau of fire investigation concluded that there were 8,600 fires during 1980 which were incendiary, and there were 8,100 such fires in 1981. The result of damage by arson fires is staggering. Entire neighborhoods within our Nation's urban centers have fallen prey to the devastation worked by fire. The South Bronx lost over 30,000 buildings. By creating an atmosphere of fright, arson causes abandonment of yet further buildings and eventually whole communities. It is a vicious cycle that spreads across the cityscape as arson begets abandonment and abandonment begets arson.

Each arson fire costs my department approximately $938 to investigate. In 1980 New York City spent more than $9 million to investigate arson cases and more than $69 million to extinguish reported arson fires. While these costs can be measured, there are indirect costs that cannot. Each year fire is the cause of death of many innocent victims. Last year there were 246 fire-related deaths, and of these, 40 people were murdered by arson fires.

However, other costs are not quantifiable, and they include the damage to a city's image through neighborhood deterioration, the interruption of business, the destruction of a healthy climate for growth and investment, loss of jobs, the emotional impact upon victims in a neighborhood, and the loss of irreplaceable personal property.

Mr. Chairman, small businesses which are the lifeblood of a city's numerous and varied neighborhoods have been particularly hard hit by the ravages of arson. Last year in New York City there were 4,200 fires in commercial buildings and of these, approximately 1,900 were incendiary fires and 1 out of 7 were severe enough to render the building unsalvageable.

Perhaps to illustrate the impact of arson on a particular neighborhood and its small business, it would be useful to discuss the Jamaica Shopping Mall fire which occurred in the early morning hours of February 16, 1982. That fire broke out in a men's clothing store located in the mall, and the fire marshal soon discovered that it was an arson-related fire. The arsonist apparently had entered the clothing store after breaking into a shoe repair store also located in the mall.

The fire spread quickly, traveling through a common suspended ceiling, and soon the fire went to five alarms requiring 130 firefighters and 35 pieces of apparatus. It took 4 hours to place the fire under control. The results were devastating: Of the 11 stores in the mall, 7 were totally gutted and the remaining 4 were severely damaged.

The fire had started in the heart of the 165th Street Mall project, which had been the centerpiece of the revitalization of the Jamaica section of Queens County. That larger shopping complex was completed in 1978 with Federal funds amounting to $1.5 million, and it is now estimated that to rebuild just the Jamaica Mall portion of that complex will cost nearly $1 million.

There were 36 incendiary fires in New York City in commercial structures during that week beginning February 14 and ending February 20. A conservative estimate of the dollar loss to these businesses in the city for that 1 week is nearly $1.5 million.

To meet the challenge to contain arson, the New York City Fire Department in early 1981 instituted an arson suppression program called the red cap, named for the red baseball caps that the fire marshals wear. It is operated in the Washington Heights-Inwood section of Manhattan, the Sunset Park section of Brooklyn, South Jamaica in Queens, Central Harlem in Manhattan, Coney Island in Brooklyn, and is presently operating in the Fordham section of the Bronx. In these areas as of June 1, 1982, arson fires are reduced by 17 percent, arson arrests are 7 times higher, and false alarms are down by 20 percent.

There are two major components to the red cap program: Fire marshals meet with community leaders and present them with an educational package which trains them to recognize the early warning signs of arson, how to discourage arsonists, and how to assist fire marshals in their investigations. The second component consists of 50 fire marshals who are sent to patrol the neighborhood on a 24-hour basis. As they ride around in their clearly marked cars and meet with people, they serve as a highly visible deterrent to would-be arsonists or false alarm pullers. Because they are in an area to respond so quickly, they are able to get information from witnesses who are at the scene of a fire, which leads to more arrests for arson, false alarms, and other street crime.

Nationwide, arson is one of the lowest risk crimes. According to the 1979 Law Enforcement Assistance Administration study, only 11 persons were arrested for every 100 arson cases investigated. The red cap program has bettered that figure by 21 percent.

The fire department has attempted to assess the economic impact of red cap by measuring the cost of containing fire activity through investigation and extinguishment, and factoring in the tax base loss through personal property and sales taxes. The results document a cost savings of more than half a million dollars in the red cap target areas. That complete analysis, Mr. Chairman, is available for you and other members of the committee to study.

For red cap——

Senator D'AMATO. Mr. Hynes——

Mr. HYNES. Let me just complete this for a moment.

Senator D'AMATO. Sure.

Mr. HYNES. For red cap to have a lasting effect on this city or any other city, it requires substantial staffing. However, arson is a nationwide problem, as I indicated before, and it seems to me therefore that no municipality should have to go it alone. What is really required is a Federal support structure which will demonstrate for cities who have the incentive to have these kinds of programs, a Federal interest.

Currently, Mr. Chairman, we have a situation that does not make any sense. The Government each year gives out billions of taxpayers' money for tax abatement to fuel the engine of neighborhood revitalization and preservation, with little or no money going to end the hemorrhaging of taxpayer funds. What I propose today is an urban arson project based on New York City's red cap experience that would operate in 10 major cities, including New York City. The program would be funded by the Federal Government for a 3-year period, and during that time careful, ongoing evaluation of these red cap satellites would be done. That data would be used to determine the Federal Government's future role in such projects throughout the country.

Mr. Chairman, 6 years ago I testified before the Senate Subcommittee on the Aging, while I was a special State prosecutor investigating nursing homes. At that time New York State was the only State spending any kind of resource on investigating medicaid fraud. As a result of that testimony and the work of Attorney General's offices throughout the country, the following year the Senate and the House passed a bill which was signed into law by President Carter which created the National Medicaid Fraud Control Program. There are now 30 States involved in that program and, as the House Committee on the Aging recently reported, medicaid fraud has been substantially contained in this country.

I would hope today is a beginning to contain another blight on our Nation. Thank you.

Senator D'AMATO. Thank you very much, Commissioner Hynes.

Let me ask, since you have just concluded testimony in this area that I think is most important, do you see any opportunity in your program to tie it to the use of community development funds, so that these funds for neighborhood revitalization could be used for planning and program development in the area of arson prevention?

Mr. HYNES. I think that would be an excellent vehicle for the program, Mr. Chairman.

Senator D'AMATO. Given the fact that there has been a longstanding debate in regard to the investigation and handling of the arson problem: What kind of relationship do you have, does the fire department of New York have, with the police department in coordinating these investigations?

Mr. HYNES. When I became commissioner in November 20 of 1980 I think that was true. I do not think it is any longer true. Commissioner McGuire and I have worked very, very closely on team policing, for example, which teams a fire marshal with a police detective. It is currently operating in two sections of the city and has had excellent results. I really think that I am happy, and I am sure Commissioner McGuire is as well, that the parochialism has ended between the fire department and the police department.

Mr. MCGUIRE. I think that is a fair statement, Mr. Chairman. We have an arson strike force in New York City composed of various commissioners, city hall representation, the housing preservation commissioner, Tony Glydman, because of the tremendous impact arson has on housing in New York, and we have meetings whereby we coordinate the law enforcement approach to arson in New York City.

Senator D'AMATO. Do those activities also utilize the resources of the insurance companies, their investigators, their information? Are we——

Mr. MCGUIRE. There is some connection between the arson strike force and the insurance industry but we have not seen a tremendous awareness and recognition or a willingness to act on behalf of the insurance industry generally with respect to this area and with respect to, for example, stolen cars, where one would believe that the insurance companies would be in the forefront of attempting to get these problems under control. Whether it is because the premium increases are passed on to the consumer, or because of a lack of understanding which is hard to believe, nonetheless it is very, very difficult for people in law enforcement to understand why there has not been more initiative and cooperation on the part of the insurance carriers.

Senator D'AMATO. Commissioner Hynes, has that been your experience as well, that there has not been adequate sharing of information by the insurance industry?

Mr. HYNES. There has been increased dialog between my department and some of the insurance companies. They assist us, for example, in an advertising campaign which is preventive in its goal. I think there is more communication than we have had in the past but I would agree with Commissioner McGuire that there is not nearly enough, given the scope of the problem.

Senator D'AMATO. Well, let's see if we can do something in regard to that, either by way of legislation or by way of jawboning or by way of some report language. Certainly this committee will investigate this, and I think that you can look forward to us calling in representatives of the insurance industry. I would suggest that at first we attempt to do that by way of some meetings together, to see exactly how we can get them to be more cooperative.

Generally the fellow way up at the top does not know what is taking place down in the trenches. I would not be a bit surprised if that were not the case here because it would seem to me that great dividends could result from their cooperation in sharing information. This could substantially reduce their premiums and their costs, and it could help us get better results in preventing these crimes, whether they be burglary or arson, et cetera.

Commissioner McGuire, what has been your recent assessment of the Federal-local effort—I think it was called FIST—in terms of the apprehension of career criminals here in New York? What would be your assessment of that program?

Mr. McGuire. I believe you are referring to a program that was initiated by the Department of Justice in cooperation with the New York City Police Department with respect to violent felons against whom warrants had been issued. We had a very, very positive experience, a very cooperative effort by the U.S. marshals and some of our detectives, and we were very encouraged by the results: Namely, numerous violent felons were apprehended. We were just sorry to see the program end. Like a lot of good things, you cannot keep some of these programs going, and I think that was my only lament about the program, which I passed on to the Justice Department. However, I was extremely encouraged by the cooperation.

Senator D'Amato. Does it make sense to add more police officers without adding additional prison cells to house those who will be arrested and hopefully successfully prosecuted?

Mr. McGuire. Looking at it from one perspective, it clearly makes sense to add more police officers in order to contain and dissuade people from committing crimes on the street, but when you look at it from the perspective of the absolute necessity to arrest, prosecute, and incarcerate large numbers of people, which is the inevitable byproduct of a lawless society that we are living in right now, of course it is absolutely essential to have increased prison capacity.

The studies indicate, for example, with respect to New York State we are at something like 110 to 115 percent capacity. Rikers Island, with respect to city detainees, is overpopulated. As you are well aware, the Federal courts are actively involved in monitoring State and municipal prison systems, sometimes to our dismay since they do not have to go out and raise taxes and provide for all the other social services in the local municipality, and when one focuses on one narrow area, you can be extremely difficult to deal with. However, the fact remains that for whatever reason we have vastly increased the numbers of people who should be incarcerated and we do not have the prison capacity in the United States to deal with it.

I thought that Attorney General Smith had been moving in the area of making available some Federal facilities to the local municipalities. I am not sure that has taken place anywhere but I thought it was an interesting idea. We absolutely need more prisons if we are going to incarcerate people. If we do not have that deterrent out there, then we are a paper tiger and I think that given the fact that we are all overpopulated, and there is early release now going on around the country, being ordered by Federal judges because of overcrowding in prisons, that something must be done and it has to be a joint Federal-local effort.

Senator D'AMATO. Let me say one thing before I ask this last question: The Attorney General has been very vigorous in freeing up excess properties, former air bases, et cetera, for local-State use to utilize these properties as prison facilities, and I know that has been a high priority area. I share your concern, though, and believe that although it is a good initial step, it does not go far enough. The problems are much more complex. The situation is much more dangerous than many might care to admit. We almost literally have anarchy in our criminal justice system as a result of inadequacies at various levels.

One of the inadequacies that comes to mind is a mental set that says that there is something wrong or unconstitutional in the case of a person who has a record as a convicted felon who is then apprehended, arrested, and charged with another such penalty to help that individual for a speedy trial. I am talking about pretrial detention. Would you care to comment on that? It is something that I think its time has come and its place has come, and which can be and should be utilized to make the job of the front line, the police officers, one in which they do not have to face the revolving door syndrome where they arrest a criminal in the morning, and in some cases literally in the afternoon he is out on the street again before that arresting officer is home.

Mr. MCGUIRE. I am just not sure it is not a diversion. The fact is that judges, with respect to setting a bail, have virtually unlimited authority to determine the seriousness of the crime, the background of the offender. However, the reality in large cities today is that judges are setting bail of $50 cash, $100 cash bail, $500, $250, and then it depends on whether you have that kind of money if you stay in or out. If you have enough money, or are in an organized criminal area, you are going to be out and you are going to be plying your trade again.

Before I go to something like that, I would think that what we ought to have is the capacity to expeditiously try these cases. I think what happens is, you get torn asunder by the fact that people are in jail awaiting trial for 18 months. On the other hand, we do not want to allow out on the streets people who have a criminal history of three rapes and two robberies, and then are accused of another rape or another robbery with two eyewitnesses. In those cases I do not lose any sleep about the fact that a judge had a hearing and found probable cause that this particular defendant, with a heinous criminal record, who has just committed another crime and there is extremely strong evidence against him, that he should be held on very, very high bail. I do not think you have to get to preventive detention to accomplish the same goal but I think you have to be prepared at that moment in time to expeditiously try that defendant. He is presumed innocent under our Constitution. I do not want to give that up but I would like to see within 30 days or 45 days, the capacity to try that defendant.

Therefore, I think that it really goes to the heart of the reform of the system. Right now we do not have the capacity to do that, and as you pointed out, we do not have the place to put the man after we convict him anyway, so that these are very, very complicated issues. We have a very small part of our budget committed to law enforcement and I think people have to reorder their priorities if they indeed want to have a peaceful society, and if you believe as I do that law enforcement is an integral and essential part of containing crime and reducing disorder in the streets.

Senator D'AMATO. Commissioner Hynes, would you care to comment on that?

Mr. HYNES. Yes, I will comment in my role as criminal lawyer temporarily assigned to the fire department, and I agree with Commissioner McGuire.

Senator D'AMATO. That is a temporary assignment?

Mr. HYNES. In relative terms, it is. It has been 21 months but it seems like a lot more than that.

However, I agree with what Bob said, and also I think back to those days when I began to try cases as a legal aid lawyer in 1963, and you did not have nearly the kind of delay that we have today. That has been the tragedy of the system. The system is at times, I think, in danger of coming to a halt, coming to, becoming a system gridlock. Before I would favor extreme measures such as preventive detention, which causes some serious difficulty with the question of the presumption of innocence, I would like to see something done to dramatically speed up the system and I think it can be done. I think we have enough minds in the system to develop something, and I think we ought to spend as much resources as necessary on speeding up that system.

Senator D'AMATO. Of course, I am always faced with the dilemma of seeing the situation that Commissioner McGuire mentioned, where someone who has a record of 17 or 18 arrests for robberies, assaults, and assorted other petty larcenies, et cetera, comes in charged with rape or second degree murder—these are actual instances that have come to my attention—and just as Commissioner McGuire has indicated, is let back out on the street—in one case on his own recognizance with an admonition that he not come back into this jurisdiction because he had evidenced in an interest, after having killed one member of his family, in coming back and killing another member, and this one jurist took it upon himself to allow him back out.

Another person out on second degree murder was then apprehended, and everyone was shocked. He was out on $200 bail. They were not shocked that he was out on $200 bail. What they were shocked about was that he was using a youngster to carry heroin around in a pocketbook, and the youngster was 3 years old. The fact that he was out on the street within a matter of months after his initial apprehension on $200 bail, I think that was the shocking thing.

You hear law enforcement officers say, well, we arrest them in the morning but they are right back out there, and now every other crime is kind of "on the house" because they know they are not going to get any additional time. Therefore, I agree with you in terms of speedy trial but what about cases where there is pretrial detention and a trial ordered within a 60-day or a 90-day period of time, rather than having——

Mr. McGuire. I think you can accomplish the same thing without getting into that debate that is like an abortion debate, you know. You do not persuade people. People have their views about preventive detention. I think judges ought to take into account the criminal history of a defendant, his background, his propensity for committing crimes, and set very high bail and then put him on a special track and order an immediate trial in his case.

Senator D'Amato. Let me share with you my frustration in regard to that. We have a number of statutes in various States and local areas that say specifically, the judge shall not. Of course under the law even here in New York, there is an implicit thread that runs that bail is set as a condition to guarantee a person's coming back to the court but not in terms of whether that person constitutes a danger to the community. In the District of Columbia, of which I sit as chairman on the Committee on Appropriations, in the law it says that the judge specifically will be barred from utilizing bail or looking at a person in terms of whether he or she is a danger to the community. Now wouldn't you think that legislation that ties the hands of a jurist who says, "Well, I cannot set high bail because I am specifically precluded from judging whether or not this person is a danger to the community," is ridiculous.

Mr. McGuire. Sir, I would like to introduce Kenneth Conboy, who is Deputy Commissioner for Legal Affairs in the New York City Police Department, and ask him just to respond with respect to the New York experience about a piece of legislation that was passed last year which gave the judges more authority and what the experience has been in terms of its utilization.

Mr. Conboy. Well, Senator, the law in New York does give considerably more authority to a judge to consider the practical ramifications of a defendant in custody being on the street awaiting trial. The judge is required, in order to consider the danger of the defendant, to have a hearing. This hearing is held on motion of the district attorney.

The Citizens Crime Commission of New York City, Mr. Thomas Reppetto, did a review of the utilization of that new law by the city district attorneys after, I believe, the first 6 months of the effectiveness of the statute, and found that there had not been a single hearing——

Senator D'Amato. That sounds like the pretrial detention provisions we have in Washington, D.C.

Mr. Conboy. Of course, part of the reason is that there is a relatively sophisticated school of thought in the courts in New York that a judge may indirectly incarcerate without that hearing if he concludes—and this is the mental fillip that one goes through—that the defendant's crime is so serious and the consequences, at least theoretically, so draconian, that he, the defendant will not likely appear, so therefore what you do is you convert the defendant's dangerousness into the more traditional and conventional view that he, the defendant, is not going to appear because the crime is so heavy.

But under this new law you have explicit authority in New York authorizing a judge to incarcerate based upon a serious criminal record and likely danger to the community, hedged in with a very significant constitutional safeguard, to wit, this hearing. Then you have district attorneys reluctant to go into the hearing because it involves disclosure of evidence, it involves the old problem of discovery before the fact of the trial.

Therefore, the plain fact is that there has been in New York the authority but not the will to use it, and then the collateral disposition of many judges not to remand but to set bail at such a high level that as a practical matter the defendant is preventively detained pending the outcome of the proceedings.

Mr. McGUIRE. Senator, there is another area that should just be briefly mentioned, and that is that we find people who are out on probation or parole who do not want to go back, for example. We have seen police officers murdered in this city in the last couple of years, and we find out that they are out on parole or probation, and whatever mental gymnastics they went through, it was more acceptable for them to pull the trigger and shoot, kill one or two police officers.

We find a great number of defendants who are out, either awaiting trial, in one case committing a great many other crimes, or additionally out on probation or parole who are also committing criminal activities, and that is a serious problem today.

Senator D'AMATO. Commissioner, what I think we have here is three fine former defense lawyers who are very much tuned in to constitutional safeguards. But the fact remains that even where the legislative process outlines a method by which to distinguish those who have shown a propensity for violence toward the community, we have a reluctance or an inability of the system to move forward and execute those formulas by which you could detain them.

Mr. McGUIRE. Also those defendants.

Senator D'AMATO. Pardon me?

Mr. McGUIRE. Also those defendants: We have a reluctance to execute the defendants, too. We certainly have a reluctance to send them to jail in any meaningful period of time, I will say that.

Mr. HYNES. For my own part—I do not think Ken has ever been accused of being a defense lawyer, he has been a prosecutor all his life—I spent most of my professional career as a prosecutor. I am just one who believes that you have significantly severe punishment post-conviction but this system is never going to turn around unless we speed it up, so we can have speedy trials and post-conviction remedies which are there. The tools are there, just——

Mr. McGUIRE. I do not want to be misunderstood, either. I am not for letting these people out who have 17 violent crime convictions and then have very strong evidence against them in the 18th. My view is to set very high bail in that case. Presumably the defendant in most cases is not going to meet it, and then you try that case very expeditiously. I would also——

Senator D'AMATO. Then why not give the judge legally the ability, commissioner, to say that he finds that this person is a danger to the community, that he will hold him without bail or with very high bail as a result of his being a danger to the community and order a trial within 60 to 90 days?

Mr. McGuire. You can do that. We have essentially that law with some additional constitutional safeguards in New York and it is not being implemented. I find that all of these things are like cocktail party chatter. This is another piece of legislation which is not going to be used.

My view is that the system, one, is not capable of handling the numbers it has right now with the resources it has. Two, it has to be managed far more efficiently than it presently is, and there has to be a will to truly bite the bullet with respect to the numbers of people committing crimes, the seriousness of those crimes, and society's reaction to that in terms of punishment. I am not talking about the social services side; I am strictly speaking about the law enforcement side.

The other reforms, a piece of legislation here, a piece of legislation there, are not going to do the trick. That is why I asked Ken to talk to you about the New York experience, because I did not think it had been utilized in one particular case.

Senator D'Amato. Let me thank you, Commissioner Hynes and Commissioner McGuire and Ken Conboy, for your appearance, and let me also state, Commissioner, that in terms of our working together to get some cooperations from the insurance industry to combat arson and some of the other areas where they can be most helpful. I intend to see to it that the staff follows through and I hope that we can work together on that.

In terms of our legislative proposal which we have already drafted, we and will be circulating it to certain people who are in the area of combatting crime for comments prior to its legislative submission to the Congress. It deals specifically with the area of aid to local jurisdictions for prison construction because I think, as I mentioned to you, the Federal Government is failing in its basic responsibility of protecting domestic tranquility. That is, protection not just from foreign attack, not just from insurrection or riots, et cetera, but also to see to it that people have a feeling of security, whether in their home, or on the streets, or in their place of work. We all have the right to feel that way, and I think there are very few of us who do, whether here in New York or in the suburban communities.

The shock and the indignation over what took place on Long Island not too long ago at the Jerico Diner served as a reminder to many, many people that we are not immune from crime. I see it taking place in suburban households in neighboring communities. Just last night one was literally invaded by two thugs who broke into the house, and I guess it is a story in today's media. Unfortunately there are many of these things taking place with too much frequency, and so I think we need a concerted effort against crime.

The Federal Government in my estimation has failed to meet one of its basic responsibilities, to give you the tools locally or to help provide resources to see to it that our streets are kept free from this pervasive fear of crime on the streets and within our homes. You cannot spend a better dollar, and I just think when people vote down bond issues for building prisons and whatnot and say, "We can do it another way," well, show me. Where is that way? How have they done it? They have not done it.

We will take a brief, 5- to 10-minute recess before we have the second panel. Thank you, gentlemen.

[The prepared statement of Mr. Hynes follows:]

STATEMENT BY
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URBAN AND RURAL ECONOMIC DEVELOPMENT
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Arson is one of America's most tragic and costly crimes. It causes more deaths than all natural disasters combined. As many as 1,000 people die and another 15,000 are injured each year in the United States as a result of arson fires. Its cost is astounding - $1.8 billion annually in direct property losses. The indirect losses caused by arson have been estimated to be as high as $15 billion annually, and insurance losses alone total $3 billion a year.

Arson has been growing at an alarming rate over the last decade. During the period, incidents of arson have quadrupled and the dollar loss over the same period has increased tenfold. Arson accounts for 25 percent of all fires and one-quarter to one-third of all fire insurance premiums. If the growth of arson continues unabated, the economic loss may reach $89 billion by 1986; enough money to build approximately 1.8 million homes at a cost of $50,000. each.

In New York City, the Fire Department's Bureau of Fire Investigation concluded that 8,659 fires during 1980 were incendiary and that there were 8,105 such fires in 1981. And while that impressive reduction is due in part to Operation Red Cap, which I'll discuss later, a new improved working spirit between the Police and Fire Department and the work of the Arson Strike Force, the need for vigilance is essential.

The extent of damage caused by arson fires is staggering. Proud neighborhoods within our nation's urban centers, have fallen prey to the devastation wrought by fire. The South Bronx lost over 30,000 buildings. And this picture does not begin to describe the loss of jobs, business or personal and property taxes. The loss of these jobs and homes has had a great emotional impact upon the residents of the striken neighborhoods. By creating an atmosphere of fright, arson causes abandonment of yet further buildings and eventually, whole communities. It is a vicious cycle that spreads across the cityscape as arson begets abandonment and abandonment begets arson. The entire City suffers as some of its neighborhoods die, others deteriorate and new demands are placed on the city's limited resources.

The firefighters who respond and extinguish arson fires also suffer the effects of this vicious crime. Approximately, one firefighter at each fire is injured severely enough to be granted medical leave. Last year, 12 percent of all work days lost by firefighters were related directly to arson fires.

Each arson fire costs my Department approximately $938 to investigate. In 1980, New York City spent more than $9 million to investigate arson cases and more than $69 million to extinguish reported arson fires. These, however, are only some of the costs to the city. It also loses all income formerly derived through property taxes from now burned down buildings. Social services must be provided to the victims to relocate the displaced and heal the burned. Insurance companies and building owners are also affected by fire's destruction of property. Owners must renovate their property, warrant area cost, while the insurance companies must meet the claims of the customers, causing premiums to rise for everyone.

While these costs can be measured, there are indirect costs that cannot. Each year, fire is the cause of death for many innocent and unfortunate victims. Last year, there were 246 fire related deaths. Of these, 40 lost their lives in incendiary fires. Other costs not quantifiable include the damage to the city's image through neighborhood deterioration, the interruption of business and the destruction of a healthy climate for growth and investment, loss of jobs, the emotional impact upon victims and their neighborhoods, and the loss of irreplaceable personal property.

Small businesses, which are the lifeblood of the City's numerous and varied neighborhoods, have been particularly hard hit by the ravages of arson. A single fire can wipe out a lifetime of hard work. Not to mention the money, perhaps a life savings invested in a small enterprise by local business people. Last year, there were over 4,200 fires in commercial buildings and numerous others in businesses located within buildings that are primarily residential in nature. Of these, approximately 1,900 were incendiary fires and about 1 in 7 were severe enough to render the buildings unsalvageable.

Perhaps to illustrate the impact of arson on a particular neighborhood, it would be useful to discuss the Jamaica Shopping Mall in Jamaica, Queens, as a casestudy. In the early morning hours of February 16, 1982, a fire broke out in a men's clothing store located in the Mall.

The Fire Marshals later determined that the fire was incendiary in origin and that the arsonist had entered the clothing store after breaking into a shoe repair store also located in the Mall. The fire spread quickly traveling through a common suspended ceiling. Soon the fire went to five alarms requiring 130 firefighters and 35 pieces of apparatus. It took four hours to place the fire under control. The results were devastating. Of the eleven stores in the Mall, seven were totally gutted and the remaining four were severely damaged. Tragically, the fire occurred in the heart of the 165th Street Mall project which had been the centerpiece of the revitalization of the Jamaica section of Queens County. The larger shopping complex had been completed in 1978 with $1.5 million in federal funding. It is now estimated that the cost of rebuilding that part of the project will be nearly $1 million.

To understand the staggering amount of dollar losses suffered by small businesses in New York City because of arson fires, you need only examine the cost of arson during the same week that the Jamaica Mall was destroyed.

There were 36 incendiary fires in New York City in commercial structures during the week beginning February 14th and ending February 20th. These fires took place in small businesses ranging from corner groceries, luncheonettes and clothing stores to factories, warehouses and office buildings. Some of these businesses will not reopen, while others have been hard pressed to recover from these fires. All of them lost income while renovating or relocation took place. And once these businesses do reopen, they find they have lost customers to competitors, and the neighborhood around them may no longer be conducive to doing business.

A conservative estimate of the dollar loss to these businesses and the city for the one week is nearly $1.5 million dollars. But there is no way to accurately assess the total damage caused by these fires. No price tag can be placed upon the loss of a person's lifelong work, the emotional impact, and the effect on people's perception of a neighborhood caused by these arson fires.

To meet the challenge to contain arson, the New York City Fire Department in early 1981 instituted an arson suppression program called RED CAP. The program has operated in Washington Heights - Inwood, Sunset Park, South Jamaica, Queens, Central Harlem in Manhattan, Coney Island in Brooklyn and is presently operating in the Fordham area of the Bronx. In these areas, as of June 1, 1982, arson fires were reduced by 17%, arson arrests are seven times higher, false alarms are down nearly 20% and all types of fire are reduced simply because there is a greater awareness of fire safety. All this - because of the physical presence of the fire marshals and the Red Cap program.

There are two major components to the Red Cap program. One is the increase of community awareness about arson and the steps which can be taken to combat it. Fire marshals meet with community leaders and present them with an educational package on arson. They are trained to recognize the early warning signs of arson, how to discourage arsonists and how to assist fire marshals in their investigations.

The second component of this program consists of 50 fire marshals who are sent in to partol the neighborhood on a 24 hour basis. As they ride around in their clearly marked cars and meet with people, they serve as a highly visible deterrent to would-be arsonists or false alarm pullers. They are also available to respond to every fire incident and determine the cause and origin of each fire. Because they are in the area and can respond so quickly, they are able to get information from witnesses who are at the scene of the fire. The immediacy of this information leads to more arrests for arson, false alarms and other street crimes.

Nationwide, arson is one of the lowest risk crimes in America. According to a 1979 Law Enforcement Assistance Administration study, only 11 persons were arrested for every 100 arson cases investigated. The Red Cap program has substantially bettered this figure by achieving a 21% arrest rate for arson cases. In Inwood, Manhattan the marshals made 11 arrests as opposed to 3 the previous year in the same time frame. In Sunset Park, there were no arrests in May, June or July of 1980 by fire marshals, but in 1981 24 individuals were arrested - 6 for arson. Red Cap gained a total of 45 arrests in Jamaica, including 22 for arson, as opposed to a single arrest during the same time period of the year before. In Harlem, the marshals picked up 20 more arrests, 14 of which were for arson. In the previous year, fire marshals had made only 2 arrests during the same months. Overall, the number of arson arrests by marshals in the Red Cap program have risen from 6 to 42, a sevenfold increase. Total arrests for all crimes are up seventeenfold from 6 to 103. As to convictions, it is too soon to judge Red Cap's effectiveness.

The Fire Department has attempted to assess the Red Cap program through the use of a series of economic indicators, which measure the cost of fire activity. This model includes both, personal losses due directly to fire damage and the subsequent personal costs associated with the fire. In addition, the model accounts for the expenses to New York City to extinguish the fire, to demolish the building, if necessary, and the tax revenue foregone as a result of the fire damage. These cost figures are also compared to the cost associated with the same time-frame of the previous year. The total reduction in both city and personal costs amounted to over half a million dollars. A detailed explanation of the various costs involved and a hypothetical case study exhibiting how the cost factors are derived from real fire reports, is available from the New York City Fire Department.

But, the Red Cap program does much more for the community in which it operates than can be expressed by any dollar figure. It gives new hope to neighborhoods previously cowering under the shadow of arson. It saves countless people from death and injury. By reducing the level of fire activity in a neighborhood, it allows business to flourish people to sleep at night without the fear that their building may be the next to burn. It gives them a real sense of security for themselves and their families.

For Red Cap to have a lasting effect on this city, it requires substantial staffing and funding on a citywide basis. Obviously, the city cannot finance such an undertaking, and, more to the point, New York City has no monopoly on arson. It is a nationwide problem which crosses all socio-economic levels. Communities everywhere have been touched by arson. It seems to me from the nature of the beast that no municipality, no matter how well equipped, trained and motivated can "go it alone." What is really required is a federal support structure for municipalities which demonstrate the ability and willingness to create a comprehensive program.

Currently, we have a sutuation that does not really make much sense. Government each year gives out billions of dollars in taxpayers' money and tax abatements to fuel the engines of neighborhood revitalization and preservation, and little or no money to end the hemmoraghing of taxpayer money caused by arson.

What I propose is an urban arson project - based on New York's Red Cap experience that would operate in ten major urban cities, including New York City. The program would be funded by the federal government for a three year period. During this time, careful ongoing evaluation of these Red Cap satellites would be done. This data would be used to determine the federal government future role in such projects throughout the nation.

All the elements for scandal are present in the arson problem across the country. Unless the federal government is prepared to do something dramatic to assist local communities, the consequences can be tragic.

A revitalized New York City is ready to assist other urban centers - it is a unique laboratory -- but it must be given the resources to complete its experiment.

[Recess taken.]

Senator D'Amato. Our second panel is of small business people, people who I would refer to as those who have been there, who have seen, and in many cases unfortunately have been victimized: Mel Halperin; Alfred Rivera; Josephine Scalici; and James Schiffer. Why don't we start it just in that order? Mr. Halperin.

STATEMENT OF MEL HALPERIN, BRONX, N.Y.

Mr. Halperin. Thank you, Senator.

I was in your office last week and had the pleasure of talking to your two associates——

Senator D'Amato. Professor Ray.

Mr. Halperin [continuing]. And I spent part of this weekend thinking about what I would be saying. I really do not know if the essence of what I am going to say to you now is what you are looking for because I did not think it would be productive to recount war stories and horror stories. I have the feeling that you are going to hear some of them from the panel that is alongside of me.

However, what I tried to do, I feel that I am a pretty good objective observer of the scene. I operate a family business on 161st Street, right across the street from Yankee Stadium, and the shop has been there 49 years. If your arithmetic is good, that brings you back to 1933 which was when prohibition was repealed, so my father and I have actually been in this business since it has been legal and some say my father was in it before.

Anyway, I have gotten, my father and myself have gotten to be well known in that community. People sort of come to us with their problems and some years back when at different times crime problems reared their ugly head, what people would do at those moments is band together and find that in a collective effort perhaps their efforts can have a greater impact. It was at that time that we formed a merchants' association but not only was it a merchants' association, it turned out to be—the name of it is the Stadium Merchants Professional and Civic Association—which means that every aspect of the community that lives and works there is involved in this organization.

It was as a result of becoming head of that organization that I have had what I feel has been a productive relationship with the 44th precinct, which is located in our business community, and I have always felt that they have been available to us. I am not a belligerent type person, even though things have happened to me, and perhaps one of my failings as the leader of that group is that I am not belligerent enough when I go to speak to the captain or the deputy inspector to tell them the plight of our shopkeepers, because when they explain to me that it is just a question of the fiscal crisis, a lack of manpower, I can understand it, and you cannot get blood from a stone.

However, what I wanted to do was give you some of the philosophy, I think, that is on our street and what we think is necessary, what might be helpful to you. I am sure that none of these things that I am going to say are things that you have not thought of yourself. However, I would like to comment first on the role of the police as I see it and then the role that I would like to see the community, local, and national governments play.

I feel very strongly that the philosophy of the relationship of the police officer in the community service must return to the pre-Knapp Commission days. To be an effective beat patrolman, he has to become an integral part of the community. He has to be a known quantity on the street, what he will permit and what he will not stand for. The people of the community must get to know him and know that they can rely on him. The officer, in turn, must get to know every nuisance of the street, who the troublemakers are, the sore spots, who belongs, who bears watching.

What is happening is, there is a constant shuffling of the force on the street. We happen to be very lucky on 161st Street because many times there are as many as 80 police officers on the street because of Yankee Stadium. Up the block is the Bronx Supreme Courthouse. The borough president's office is there, and our street gets a lot of attention. I am probably embarrassed at the amount of coverage we get compared probably to my fellow business people here, and yet that police force does not make the people that are walking around in the street and working in that community feel that they are representative of the community because they are there on a detail. They guide traffic, which I am saying is important for the Yankee Stadium, but maybe when there is a problem downtown some of them have to be detached to that. The beat patrolman, the person that knows the situation, is not there on a consistent basis.

I feel that one of the problems is the deterioration of the morale of the community, the business community and the people that live there, and the reason the morale is at such a low ebb is, if you walk along 161st Street you can actually see derelicts, peddlers, beggars, human refuse if you want to call it that, along with the physical refuse of garbage, where people litter and everything like that, and it makes people feel a sense of helplessness, especially if you see a police officer sort of step over these people and continue on his way to direct traffic or go to his meal. I have gone out in the street many times to say, "Can't you either call an ambulance, assist this person, or remove him from the street?"

This in itself is not part of the crime problem but growing up in New York—and I came from a middle-class area, and I think that my group of peers at that time all turned out to be lawyers, doctors, and so forth, we certainly were not bad boys—if we congregated, if we became an assembly, so to speak, we were told to move on. We never fought with the policeman.

I feel that he has to develop that sense of responsibility to the community, to the beat that he walks, that he has to say, "Get off my street. Don't peddle here. Don't lean against the window." I cannot tell you how many times you go out, "Please don't lean against the window," and then all of a sudden there is a smashed window. This in itself, when we go to the police and we talk about our break-ins, our burglaries, they realize they are important but they do not get the same—and probably rightly so— the same recognition that violent crime does. However, destruction of your business in a sense, even if it is bit by bit, becomes a violent act against yourself. It becomes so difficult that it inhibits you in the course of doing your business, it inhibits people from coming in the street because it is just repugnant to see all of that.

Therefore, what I have tried to do is raise the consciousness of the police command there to say that somewhere along the line, whether it be from Commissioner McGuire on down, they have to get the word out that they have to—and I do not mean this in a derogatory sense—they have to behave as policemen, earn the respect of the community. I feel that my role and the community role is then to let the policeman know that we respect him and we are going to stand by him. We are not going to say, "Hey, don't beat up that guy because he is from this group or that color, and so forth." There has to be a banding together of people that want decency, safety, and good government against the ones who are unproductive.

Senator D'AMATO. Mr. Halperin, I wonder if we could begin to hear from some of the other panel members as well?

Mr. HALPERIN. Sure. I'm sorry. I thought it was 10 minutes and that is why I rationed it off.

Senator D'AMATO. No; we will get back to you for some questions.

Mr. Rivera.

STATEMENT OF ALFRED RIVERA, BRONX, N.Y.

Mr. RIVERA. Like he said, I have war stories to tell you if you want to hear some.

Senator D'AMATO. We called you, really, so that we can get your personal feelings about those things that you have witnessed and experienced and any suggestions that you might have.

Mr. RIVERA. Well, the first time was when my father was killed in the holdup in the grocery store that we have.

Senator D'AMATO. Where was this, Mr. Rivera?

Mr. RIVERA. This was in the Hunt's Point area in the South Bronx, and we lost him. The fact was that whoever did it was never caught, until this day, and nothing further went on. They probably even closed the books on the case. This was approximately 17 years ago. From there on, what kind of thoughts would anybody have if they cannot even attempt to catch the criminals, the perpetrators.

Since then we have continued to have these problems, holdups and break-ins. I have been robbed and had two or three shootouts with the criminals. Fortunately for them, I did not catch them. Besides that, my brother—I have a twin brother—he was shot taking my place one day in the store for me because they held up the store. He resisted the holdup.

All of these people that have been caught or caught later on have had records, prior records. These are the repeat offenders. I believe, my own personal belief is that something has to be done with these people after they have two or three marks on their records. You should not have to wait until they have 10 or 17 marks. You have to do something; you have to put them away, keep them away, because they are going to come out and they know their business. Their business is criminal. You either become a successful criminal or an unsuccessful criminal, so these guys that are successful will be out on the street. They are not incarcerated for a long time. They come out and they continue the same crimes.

Senator D'AMATO. You had at one time five grocery stores; is that not true?

Mr. RIVERA. Yes, sir.

Senator D'AMATO. Since that time you have sold those stores?

Mr. RIVERA. I sold all of them, yes. I have another brother who still has one because he cannot do anything else right now so he is——

Senator D'AMATO. Why did you sell those stores?

Mr. RIVERA. Mainly for safety and so on. I could not tolerate all the thefts, all the break-ins.

Senator D'AMATO. Are you saying to this committee that the basic reasons for your sale of these stores were because you would not put up with, or you could not handle or tolerate the threats, the burglaries, the robberies, et cetera?

Mr. RIVERA. That is correct.

Senator D'AMATO. At the present time you still have one liquor store?

Mr. RIVERA. Yes; I have a liquor store, and I have it caged in like the banks. You know, you have a little hole in front and you give them the liquor and you collect the money. That is the way I am guaranteeing my safety. It is necessary because there is no other way you can do it. I believe most stores are like that now. Even grocery stores, your bodegas, are actually putting up plexiglass to stay open at the late hours. You will find it in the South Bronx because there have been many victims of crimes where people have gotten hurt, and you do not want that.

Senator D'AMATO. What takes place when stores begin to shutter up and operate in that fashion. Have you noticed anything in the neighborhoods?

Mr. RIVERA. Well, everything starts to deteriorate. Your neighborhood is deteriorating. You have a lower class of people coming in and you are letting them congregate and there is nothing being done about this.

Senator D'AMATO. As Mr. Halperin said, if you ask people to move who are leaning on the windows, the chances are they will break your windows.

Mr. RIVERA. That is correct. You have to become a—what would you call it—a psychologist or a diplomat because you have to know how to handle these people. You have to ask them please to get off; you cannot tell them to get off.

Senator D'AMATO. Thank you very much.

Mrs. Scalici.

STATEMENT OF JOSEPHINE SCALICI, STATEN ISLAND, N.Y.

Mrs. SCALICI. I do not think I am going to talk as long as Mr. Halperin did. I will just give you some personal background.

My husband and I owned and operated a jewelry store for 21 years.

Senator D'AMATO. Where was that jewelry store?

Mrs. SCALICI. Staten Island. We had three encounters with crime. My first one was in 1977, robbery with a sawed-off shotgun; 2 years later, robbery again at knife point; and then in 1981, robbery at gunpoint which caused the death of my husband, and then I just gave up the business.

Senator D'AMATO. Were you there when that took place?

Mrs. SCALICI. Yes; I was there.

Senator D'AMATO. After your husband gave them whatever they wanted, they shot him?

Mrs. SCALICI. It did not really happen that way. When the two gunmen entered the store, I was in the back putting away the merchandise for the evening and both of the gunmen were in the front of the store. When they pulled their guns out, my husband went after one and the other one came after me. In defending what was his, he was shot to death.

Senator D'AMATO. Then the only reason you feel that you are alive today is because they needed you to get out of the store?

Mrs. SCALICI. Yes; seeing that we had two other prior robberies, we installed a buzzer system. You had to be buzzed in and buzzed out, and I think the only reason I was left alive was that it was the only way they could get out.

Senator D'AMATO. They told you that you had better buzz them out?

Mrs. SCALICI. Yes, or they would shoot me, too.

Senator D'AMATO. Therefore, they needed you to push the buzzer——

Mrs. SCALICI. That is right.

Senator D'AMATO [continuing]. And they actually told you that unless you buzzed them out, they would shoot you also?

Mrs. SCALICI. That is right.

Senator D'AMATO. Since that time, and this was only last year, you have closed the store?

Mrs. SCALICI. You have to give up sometime. When that happens to your partner in business, your husband, it doesn't make any sense to go on. I felt at that point I had to. That was one of the points I wanted to make. It was so traumatic for me that I felt no purpose in trying to keep this business going.

Senator D'AMATO. I understand. Mrs. Scalici, let me thank you for coming before this committee because I know that you had great concerns about your own personal safety. However, I would hope that as a victim who has experienced the ultimate in terms of human tragedy, that your story will hopefully bring in a very forceful way to others exactly the pain and suffering over what is taking place daily. We seem to have developed a shell; we have become immune. We have become immune to these incredible tragedies, these incredible situations that human beings are perpetrating on others, and we have become indifferent to it. It is a way of life. I would suggest that the difference between us and animals is that we do not accept and should not accept this as a way of life.

Mrs. SCALICI. Well, I know we have to stop victim apathy. You have to get involved when a crime happens to you. You have to let the criminal know you are going to put him where he belongs—in jail. Most merchants are afraid to get involved. They feel that justice is not served, and I think the way we can accomplish this is to streamline justice, try to end plea bargaining, try to do away with probation for first offenders. A first offense, I feel you should get penalized. If you are old enough to have a gun in your hand, I feel that you belong in jail.

I have to interject a thought here, Senator. When the trial was over, the probation officer called me and asked my opinion on the trial, and I came to find out that one of the criminals on the day of our robbery had 16 felonies against his name and never served any time for any of those felonies. I asked the probation officer, "What was he doing on the street?" I asked that question.

Senator D'AMATO. He had 16 felonies——

Mrs. SCALICI. Felonies against his name, and I was told that they were not current. It was over a period of 10 years.

Senator D'AMATO. Let me ask you, Mrs. Scalici, did they ultimately sentence him to any time in prison?

Mrs. SCALICI. Both were sentenced. The one who did the actual shooting received 35 years, and I was satisfied with that.

However, another thought: I felt the judge was condescending toward the second criminal. His remarks from the bench were that I should be thankful: He had every opportunity to shoot me and chose not to do so. For this he received a lighter sentence, and that was 15 years. I feel there should have been no reward for not killing me because what about me, my family, my business? This is what we have to put up with.

Senator D'AMATO. You are saying to this panel that the judge said to you that you should be——

Mrs. SCALICI. From the bench, I should be thankful for he had every opportunity to shoot me and he chose not to do so.

Senator D'AMATO. That is an abomination.

Mrs. SCALICI. I have never forgotten that.

Senator D'AMATO. I do not blame you. I wish that more of our media were here to listen to your testimony and to hear the incredible tragedy that has befallen you and your family and your husband. I can only thank you for being here today and sharing this tragic experience that I know you certainly do not want to relive. However, hopefully it will give those of us who are charged with the responsibility of attempting to meet the needs of people the courage and the wisdom to do what has to be done in rather hostile circumstances.

Unfortunately, there are too many people who just do not know or do not want to know or have not heard the other side of the human tragedies that befall us when we lose sight of a balanced criminal justice system. You have done much to give some balance, and I thank you very much.

Mr. Schiffer?

STATEMENT OF JAMES SCHIFFER, BROOKLYN, N.Y.

Mr. SCHIFFER. Thank you, Senator. I appreciate the opportunity to come and speak this morning.

I am a pharmacist. I have been working in a drug store since 1966 and I have been a pharmacist since 1973.

Senator D'AMATO. Were you born in Brooklyn?

Mr. SCHIFFER. Yes.

Senator D'AMATO. Very good.

Mr. SCHIFFER. Yes, I was born in Brooklyn.

Senator D'Amato. You would not know why I said that. [Laughter.]

Mr. Schiffer. Were you born in Brooklyn? Ah, we have something in common, then.

The thing that I would like to impress on you, I have been through a number of holdups. I have been in four different stores. Right now I own my own pharmacy, for the past 3 years, but since I was a kid, since 1966, I have been in approximately 15 holdups.

Senator D'Amato. You have been involved in 15 holdups?

Mr. Schiffer. Yes, sir.

Senator D'Amato. You still continue?

Mr. Schiffer. Well, you get accustomed—it is unfortunate that we get used to this type of thing but the first holdup was in 1968. I was a high school senior. I was just working as a stock boy in a drugstore. After talking to Bruce and a few of your associates last week, you stop and realize all the things that you have just taken in stride over the years.

After one—when I was a kid I said, "I am not going to tell my parents, I will have to quit the store"—you know, you try to forget about it. The first holdup, looking back now as I was talking to these reporters, the gentleman that held us up the first time was actually a gentleman and over the past 14 years, what you see now is that things have just gotten so bad. The type of criminal you have now, they are usually stoned out of their faces. They do not really have any regard for life. The first man, he was polite. He said, "Please go in the back of the store." He was a middle-aged man. Things have changed so dramatically from that first incident, and it really is scary.

I was just telling these reporters, now when I see a strange face come through the door in our pharmacy, I watch him.

Senator D'Amato. You are in Bensonhurst?

Mr. Schiffer. I am in Bay Ridge. I live in Bensonhurst but I am in Bay Ridge.

I watch strangers as they come in because it is a local pharmacy. We get to know practically all of our customers. Even if I see someone congregating outside on the sidewalk—I have a view out in the street—that is the point where you want to make sure. If he is not going to hold you up, he may shoplift. He may be looking to grab something. We have a fellow that is robbing about 10 bottles of Tylenol every few days, and we are watching this guy now.

Senator D'Amato. What do you do with something like that? Here is a guy who comes in every couple of days and he robs 10 bottles of Tylenol. That is——

Mr. Schiffer. This has gone on in the past few weeks now.

Senator D'Amato. What do you do?

Mr. Schiffer. OK. We will sidetrack just for a second. This is aside from actual holdups. This is another problem we have is the pilferage. We have this guy that comes in. He is a Spanish boy, looks like he has a mental problem, so we try to handle him with kid gloves.

When he comes in there is one particular boy working in the store he does not like. He tells him he is going to kill him. He tells him he is going to get him outside. He gives him profane language which I choose not to use here. He motions to him. The boy has never done anything to him but he is just harassing this one particular boy.

We stay by him now. He comes and he takes stuff and he moves it from one shelf to another. We tell him not to touch it. "Don't touch me, man. I'll cut your throat. Don't touch me, man." We do not know if the boy has a knife. We do not know if he has a gun on him. He lives around the corner from the store.

Actually I have spoken to a few policemen. He is a very peculiar person. We have just found that he has been robbing it the last time he was in now, so we are watching him. He sold them up in the restaurant and the woman brings them back from the restaurant and gives them to us. It is very hard to catch him in the act. He comes in usually with two or three kids. He is about 20 years old. He makes a commotion in the store and it is very, very hard. We only have three people working at a time.

Senator D'AMATO. When you call the police, what is their response?

Mr. SCHIFFER. This is a minor thing. As I was telling Bruce last week, pilferage they cannot be bothered with. Stolen cars they do not seem to be bothered with. Actually the only time you get any response is if there is a shooting or if there is actually a robbery in progress.

Senator D'AMATO. Therefore, where you could possibly head it off before it becomes more violent——

Mr. SCHIFFER. It is very hard.

Senator D'AMATO [continuing]. It builds and gives them a sense of security; the street people get a sense of security.

Mr. SCHIFFER. There is no sense of security. "911" does not want a shoplifting call. You call the precinct, they put you on "hold" for 5 minutes. By the time you get somebody there it is maybe ½ hour later. This kid is in and out of your store in 5 minutes. This is a common problem we have learned to accept.

We have baseball bats in the store. We are ready to do a number on the kid if he grabs something. To be honest with you, you do not know what to expect because——

Senator D'AMATO. Then you will get arrested.

Mr. SCHIFFER. That is right. If he has a knife, I do not want to see him slice up this boy that is working there.

Anyway, we sidetracked for a second. The major problem in our store actually is the threat of holdups. After 15 holdups—I have only had three in our present store. I was an employee previous to 1979. In 1979 we went into business, myself and my partner. We have a buzzer on the door. We have "buddy buttons" which the Federal crime—this was through the urban development, I think—they gave out "buddy buzzers" where you buzz your neighbor if you have a problem.

However, using the buzzer and using the buttons, even that, in the experience we have had it does not stop. We have had a holdup where we used both. The guy came in behind another customer when the door was locked. He put paper in the door. We had a dog in the store at the time. The dog did not move. [Laughter.]

Just everything goes wrong. The dog would bite an innocent person but the guy holding you up, he does not do anything. [Laughter.]

I mean, you have all these things. We use the buttons. We have another button to call the police. We used everyting but the response time was not there.

Therefore, in reflecting back, between all of the 15 holdups I have had, the shooting I had, the boy that got stabbed in our store and another holdup after I was shot, the only thing I can think of actually—how do I rate crime because I was asked by Bruce to tell you, how do I rate crime?—crime is running rampant, holdups, shoplifting, everything like that. It is like we have to protect ourselves. The police are doing what they can with the manpower they have.

I think some of the police stations should clean out the deadwood in their offices there. There are a lot of police officers doing paperwork type duty where we could use them out on the street. I know policemen that just put on the uniform when they have overtime. They stay in civilian clothes during the week because they do paperwork, and then for overtime they will put on the uniform and work in another precinct. I think that is a joke.

Senator D'AMATO. Do you have a foot patrolman who comes through that neighborhood?

Mr. SCHIFFER. We never see a foot patrolman. We used to see foot patrolmen years ago——

Senator D'AMATO. That is in Bay Ridge. You are in a highly commercialized area in Bay Ridge?

Mr. SCHIFFER. Yes, yes. We used to see foot patrolmen previously. I have seen one——

Senator D'AMATO. Has your association done anything to ask, for example, for the assignment of foot patrolmen?

Mr. SCHIFFER. Our association has its own bureaucracy. We are at the tail end of the boundaries of the association, and it seems that the association only caters to those few stores that are in the heart of the area, so actually we have a problem with the association. We are out there fighting things ourselves there.

Senator D'AMATO. Let me ask you this: In these holdups have they ever apprehended? You have had 15 holdups.

Mr. SCHIFFER. Yes, yes. We apprehended, through our efforts we apprehended—one time we caught hold of—we have a pharmacy across the street from us. On New Year's Day in 1980 a young girl whose boyfriend works in the store came running into our store and said, "Jimmy, I think they are being held up across the street. There is a guy lying down behind the counter and he looks like he is harassing Tommy."

I dialed 911, I told the 911 operator, "I see a holdup in progress." You have to learn how to use 911. You have to tell them so they will put a high priority on it because these 911 operators are not the brightest people. If they were bright people they would not be doing that job. They seem to have a very low caliber in 911. I said, "Lady, I see the gun in his hand," I said, "they are holding up the store." I was lying but I got the cops there right away.

The cops came. The guy tried to walk out as if he was a customer. Then when the police tried to grab him, he pulled out a knife and he stabbed the sergeant in the hand but they caught the fellow. That was not in our store so actually I did not have to go down to testify or anything.

Senator D'AMATO. Did they go and testify?

Mr. SCHIFFER. Yes, they did, and he was put away, I do not know for how long because that was not our store.

However, back in 1972 we were held up by a young man with a knife in my former store where I used to work as an employee. A young man pulled a knife on my boss as he was getting into his car. He had been standing around in the store. He tried to fill a prescription for Tuinal, which is a sleeping pill. The boss refused to fill it and the boy stood outside near the store. When we were ready to close he walked up to my boss as he was getting in the car, he took the bag of money he had, he hailed a cab and took off.

I say what had happened. I just turned around and I saw what had happened. I looked at the cab. I got the plate number. I ran to a candy store, called the police, and son-of-a-gun, as I am coming out of the candy store the cab comes back empty. I grabbed the cab. As I grabbed the cab, the cops came up. I asked the cabby where he took the boy and the cabby told me. The police and I went with my buddy. We went down to the corner where he dropped him off. We went into a bar; he was not in there. There was another bar across the street. We went into that bar. I picked him out. My buddy, who is now my partner, he was at the scene of the crime, too. He went in there; he picked him out. We went in together and picked him out and the police picked him up.

He was only 17 so he was a juvenile offender. I think they may have put him in the drug program because actually it was his first offense. He was not put away.

Senator D'AMATO. Therefore, you would testify in the event that there was a——

Mr. SCHIFFER. Yes, I would. I have always cooperated. Every time we are held up we are asked to go look at pictures in the police station. It is the most horrible thing to do, to sit down at the police station and look for hours and hours and hours at pictures. You see half your customers before you sometimes but you never see the guy that robbed you. [Laughter.]

Senator D'AMATO. If you were to make a recommendation—and I open this up to any of you—in terms of attempting to give more protection to the small business community, what recommendation would you make?

Mr. SCHIFFER. Well, I would make a couple of recommendations. No. 1, the police department is overloaded with bureaucracy. They have to put more policemen on the street. After one holdup in particular I went down to the station house and complained. They had an acting captain down there and I complained to him: The holdup team was in a neighborhood where there were no holdups at all and we had about five holdups on our block. I said, "Why don't you send the holdup team down there." This acting captain swore to me that there was no holdup team in the neighborhood, he swore to me. I had to go to another pharmacy and see the device, and then I called back the captain. He was not there.

There is a big bureaucracy. I think sometimes the left hand does not know what the right hand is doing in the police department. I think they have to get better response time on the 911. The cops that are on the street are doing a good job but the problem is, once they do catch that criminal and they bring him to court, he posts bail and he gets out and he goes out and commits 10 or 12 more crimes, maybe, before they are sentenced.

Senator D'AMATO. Thank you.

Mr. SCHIFFER. Therefore, the whole thing there is that the bail system I think should be changed from whether or not someone is going to show up again in court, to consider the fact of whether or not this person is going to be a good citizen until they get to court. Nine times out of 10, since you have repeat offenders doing things, I think that they should not give bail with such an easy attitude that they have been adopting.

Senator D'AMATO. I want to quote-unquote you right there because I think that is one of the greatest problems we have. Again, it is that handful that continues to repeat.

Mr. SCHIFFER. There are only a few people committing crimes but they are doing a good job doing it, and when they are sentenced—excuse me for interrupting you—I think they should have much more stringent penalties.

In terms of our unique problem in the pharmacies, we have drugs. These people are out there making a load of money selling drugs. What we spend $100 for may go for $1,000 or $1,500 on the street, and we have a very, very easy target in the drugstores. We are looking for Federal protection. There is a law pending before the Senate and before the House for federalization of holding up of a pharmacy when it is related to drugs. That would help us in particular.

However, in general, just as a businessman, we do need better laws and just for the judges to enforce the laws that are on the books. Keep them away. Do not just give them a plea bargain; do not put them away for 6 months with 6 months probation after that. The whole criminal justice system is a joke.

Senator D'AMATO. Anybody else?

Mr. HALPERIN. Just to continue with what he was saying, an incident that I was involved in where six men almost beat me to death and they were all apprehended. I had to go to court 18 times before they finally pled guilty. I happened to own my own business and I was able to do it. If I was employed as he was, maybe I would have lost my job.

The tragedy that happens, like Mrs. Scalici losing her husband and everything, continues if you are fortunate enough to have a policeman make the apprehension because now you have to go through another punishment. That is having your story doubted, almost being berated. I could not believe the amount of postponements, and part of it was that two of the six were then rearrested for other crimes while the trial was going on for the one with me. Another time it was postponed because, as I was told by one of the assistant district attorneys there, the lawyers on the case had not received their pay yet and it was a common practice, that their opportunity to receive their pay was greater if the trial was going on than if it had been brought to a conclusion.

I wanted to make this point because I know how you feel about the retentive bail situation, and I heartily agree with that. I look at helping to solve this problem as having an immediate effect and a long-range effect. The unemployment situation with the youth is a tremendous factor in the crime in the area because these disenfranchised people—whether right or wrong, they are that—feel they have a right to rip off the establishment because they are not part of it. Somehow the Federal Government has to aid small business people in getting indigenous people of the community to work in the community so they do not rip themselves off. If business people can be subsidized by the Government to help train and give jobs to these people, they become part of the community.

The immediate thing that I can see the Government doing is helping us with some of these crime preventive programs. We are looking into a street patrol, you know, peace officers, things like that.

Senator D'AMATO. Yes.

Mr. HALPERIN. Maybe the Government can help us, our organization, to augment the police that are out there with our own crime patrol.

Senator D'AMATO. Well, that might actually even have to come to pass in our business communities as it has begun to take place in many of our neighborhoods where there are private security forces and guards who are paid for by local neighborhoods. It is a rather chilling story, but there are areas where there is not that economic power where we have the working poor who obviously cannot afford to go out and hire their own guards. They are left, they are the victims, and it is an incredible situation.

Before I call the third panel, Mrs. Scalici or Mr. Rivera, do you have any other observations?

Mr. RIVERA. Here is one thing we were talking about before and you just mentioned now, and that is that groups of businesses have to try to hire their own patrol forces. Why do we have to, when we have a police department? We are showing the police department that they are not doing their job, and yet they are not taking the full view and realizing that it is hurting us economically. I am at the point where at times I think, why should I own a business? I will go out and get a job and make enough money, and that is it, because I do not need that responsibility nor that worry of wondering what is going to happen to me if I stay too long.

Senator D'AMATO. In fairness to the police, I might make the observation that I do not believe that they are not doing their job as such but that resources are so limited—and I think both Mr. Halperin and Mr. Schiffer indicated that things that years ago they would never have let take place, the congregation of huge numbers of unruly youngsters in front of an establishment, whether it is leaning on the window or coming in and actually harassing employees, harassing customers, creating an atmosphere of uncertainty—that those things were not tolerated years ago whereas today we find they are since there are not more foot patrolmen. By the way, this is the case not only in New York City but in Nassau County where I live, in a little, tiny village of some 5,000 people. When we had less than 5,000 we had a foot patrolman. As a matter of fact, we had 2,200 people when I moved to that village. Now it is about 5,300 people and there is no foot patrolman. There is no one who can identify with the shopowners and with the youngsters and cut off trouble in many cases prior to trouble coming about; for example, the young man who is disturbed who lives around the corner from Mr. Schiffer's store, a foot patrolman would either get that youngster some help or he would let him know that if he were to carry on his antics there, that he would land down at the station house and they would press some charges against him for harassment or criminal mischief.

Resources are limited, deployment is limited. The personalization that once existed between officer and community, that has gone by the boards, and so people are forced to turn to their own resources, their own inventive thinking—the block association, the community, the buzzer system, and thank God for that. I think maybe we had better recognize also that there will have to be a continuing presence and an interrelationship between citizens and the police.

You know, let's not kid ourselves. We have lost an awful lot in the last 30 years or so. There was once a spirit that lived in our neighborhoods and in our communities, even in communities that were poor in terms of the material sense, where people looked after each other and they took care of each other. They did. Consequently, the effectiveness of the law enforcement was enhanced tremendously as a result of this participation between citizens in our neighborhoods and our places of work, and so forth. That has for the most part disappeared entirely.

I look at some of our affluent communities where people do not even know, haven't the slightest idea who lives down the street or who is next door, and when someone is in trouble there is very little that they can do or very little they can expect in the way of help from the neighborhood and from other residents, and so forth. That is one of the problems that we face today in our society. We pay a dreadful price. We may have great affluence but we have lost an awful lot in certain other respects.

Let me thank you very, very much, Mrs. Scalici in particular because I know this was a traumatic affair, Mr. Halperin, Mr. Schiffer, Mr. Rivera, for coming in. Hopefully your testimony will add to this committee's knowledge and understanding of the problems we face today. Thank you very much.

We will call the third panel, Assistant Chief Charles Kelly and Inspector Jim Trainer.

Chief Kelly, we thank you and we thank Inspector Trainor for being with us. I know that both of you have had high in your priorities the problems of career criminals and trying to make our streets safer, so we will look forward to your testimony.

STATEMENT OF JIM TRAINOR, INSPECTOR, NEW YORK CITY POLICE DEPARTMENT

Mr. **Trainor**. Thank you, Senator.

I will just take a couple of minutes out to give the scope of the problem as we see it in the NYPD and some of the programs that we have examined and piloted and actually did over the last couple of months, the last couple of years.

We in New York are no strangers to robbery. Unfortunately, during the last decade the number of robbery incidents has spiraled upward. In fact, in the years 1979 and 1980 we led the Nation in rate per 100,000 population for the 25 largest cities. In 1979 New York City experienced 82,500 reported robberies; in 1980 we had about 100,500 reported robberies. That is an increase of about 22 percent from 1979. In the first quarter of 1981 robberies continued to increase 27 percent even over that record year of 1980. Clearly we had a problem of significant magnitude.

On April 1, 1981, the police commissioner of the city of New York launched a massive antirobbery effort. This program was both deployment and investigative in approach and was coordinated by the chief of detectives. In essence the program consisted of the creation of a Central Robbery Division, which I have been the commanding officer of since the start. We created that unit and put it within the Detective Bureau to both coordinate patrol deployment and investigate robberies of a patterned nature. To date that division has made approximately 2,000 felony arrests, 1,400 of them for the crime of robbery, many of them being for multiple robbery prosecutions.

This division focuses its investigative resources on robberies of a patternable nature, such as the driveway robberies which have plagued Queens, Brooklyn, Nassau, and Westchester Counties. The nine individuals who were arrested by the Central Robbery Division have been linked to literally hundreds of robberies of that nature. The obvious advantage to that tactic is that once individuals of this sort are arrested and convicted, they are quite unavailable for further rampages involving large numbers of heinous crimes.

The division also does extensive surveillance work, using robbery alert teams which, with the aid of computerized sound alarm systems, sit on or surveil robbery-prone business establishments. The Central Robbery Division also performs decoy, undercover, and antirobbery patrol as well as being responsible for the department's career criminal and robbery case enhancement programs, two successful efforts which I will describe later.

The patrol deployment component of the program was designed by the chief of detectives, Jim Sullivan. Essentially what is involved is a day-by-day tracking of the robberies in terms of the where, the when, and the how they occur, and the plotting of this information on a tracking map. Target areas have been selected by virtue of the density of the problem. Out-of-precinct resources, such as the tactical patrol unit, the street crime unit, the borough task forces, and the neighborhood stabilization units, are then deployed into these target areas in a kind of a saturation mode. Also involved are precinct resources, both in uniform and civilian clothes.

In all, approximately 1,300 police officers patrol these 50 target areas throughout the city on a daily basis. During the last week of every month a deployment meeting is held among patrol and detective personnel to discuss and evaluate current and future operational strategies in terms of the antirobbery program. This highly coordinated approach to the tactical deployment of resources is the cornerstone of the current antirobbery program in the department.

The following represents the results of the department's antirobbery program that we have engaged in since April 1, 1981: I stated previously we had experienced a 27 percent increase—and that represents an increase of 5,600 robberies, by the way—in the first quarter of 1981. For the life of program's operation, which is April 1, 1981, to the present time, July 1982, the crime of robbery has not only ceased its upward spiral but has actually reversed itself and decreased by 3 percent. More encouraging is the fact——

Senator D'AMATO. Is this the entire city?

Mr. TRAINOR. That is the entire city, Senator. That is correct.

More encouraging is the fact that our largest decreases are in the first half of this current year, 1982, which cumulatively are down 9.5 percent for the crime of robbery. The first 5 months showed decreases in almost all types of robberies: Robberies of bar and grilles, down 23 percent; liquor stores, 11 percent; drugstores, 43 percent; supermarkets, down 54 percent; gas stations, down 30 percent; unclassified commercials—what we call unclassified commercials, which are candy stores, mom and pop stores, shoe stores, that kind of thing—down 16 percent.

Senator D'AMATO. Inspector, let me at this point ask you something that I consider to be important. Maybe you will go on to indicate what I am going to ask you: Why?

Mr. TRAINOR. Why robberies are down?

Senator D'AMATO. Yes.

Mr. TRAINOR. I believe it is because of the robbery program that was started on April 1, 1981.

Senator D'AMATO. Give me some specifics as to what you think has been the most effective.

Mr. TRAINOR. In 1981 over 1980, robbery arrests in this city increased roughly by 12 percent over 1980. The Central Robbery Division focuses its limited resources—120 men I am talking about—on robberies of a patterned nature—people who go from precinct to precinct, zone to zone, borough to borough, committing not one, not two, not three robberies but four, five, six robberies. We arrest them. We present the case to the prosecutors for prosecution. We are not bringing them just for one arrest, for one crime, we are bringing them for a number of crimes.

It is my information that the population in State prisons has gone up about 12 percent in 1981. Clearly if the people that are arrested are separated from the law-abiding public of the city, there is going to be less crime. When 12 percent more arrests are made and you have a 12-percent increase in State prison population, through one way or another they are in there somehow, they are in the system, 12 percent more people, there has to be less crime because they are not on the street doing it.

Senator D'AMATO. Therefore, your statistics and your feeling that goes along with these statistics is that as you increase the number of arrests and convictions, there will be a corresponding decrease in the number of criminal incidents, robberies——

Mr. TRAINOR. Provided, Senator, that something is done with those folks, that they are in system somewhere.

Senator D'AMATO [continuing]. In other words, we presuppose increased arrests and a corresponding increase in the number of convictions which result in incarceration.

Mr. TRAINOR. That is correct. That is correct, undoubtedly.

Senator D'AMATO. Therefore, it takes time for this kind of program to begin to pay dividends.

Mr. TRAINOR. Yes; it does.

Senator D'AMATO. You have to get it operating, you have to get those arrests made, you have to get them off the street, just not arrest and parole or arrest and bail but arrest, trial, conviction, and detention.

Mr. TRAINOR. No doubt. There are some interesting statistics which I will get into in a couple of minutes, with your permission, that will perhaps articulate that point in maybe a little bit of a different way.

Senator D'AMATO. Yes.

Mr. TRAINOR. At any rate, concurrently for the life of the program—that is, April to July—arrests for robberies for that whole year and some-odd months increased by 2 percent, demonstrating that by a combination of prevention—in other words, putting all those cops on foot patrol in those high-target areas, those high-robbery areas—plus making more arrests for robberies, it does have a significant effect and it did reverse the trend with regard to robbery incidence in this city.

In the target areas that were subject to intense deployment—in other words, foot patrol, anticrime patrol utilizing civilian-clothes people—robberies actually decreased by 9 percent for that entire length of the period, the time frame, from April 1981 to July of this year. However, what happened, we witnessed no appreciable—what we call displacement—into nontarget areas. That did not occur. Many people thought that if we put a lot of cops in a certain particular target area that the bad guys would go into a different area. It happens sometimes but a lot of times it does not. They are dissuaded by the presence of a foot patrolman beyond a doubt, in my opinion.

We also fell, the city of New York, from 9th to 12th in rankings among the 25 cities in regard to total indexed crime. We are no longer number one in robberies per 100,000; we are now number three and two other cities which I will not mention now have the dubious distinction of being numbers one and two in robberies per 100,000 people.

Senator D'AMATO. Who are they? May I ask?

Mr. TRAINOR. You can. Boston and Washington, D.C.

Senator D'AMATO. Well, I can tell you in the District of Columbia you literally take your life in your hands just going to your car. We do not allow female staff to walk to the parking lot unattended. That is how bad it is, and that is one of the reasons I personally became involved and called upon Mr. Harris of the Justice Department and his associates. They have begun to try to do something and move the administration in a manner which will hopefully result in some of the kinds of things that you have been doing here.

Mr. TRAINOR. Also of significance is the fact that we had labeled this program an antirobbery program but in fact it turned out to be an antiburglary program as well. For the first quarter of 1981, before we started the robbery program, burglaries were up 12.5 percent, very similar to robberies being up 26.5 percent. Since we started the program, we have only had 1 month—and that was April, the first month of the program last year—where we had a burglary increase. All the other months since the time of the program have had actual decreases.

This dramatic turnaround resulted in an actual reduction of burglaries for the period of time of the program of 9.4 percent.

Again, the most dramatic decreases are for the first 5 months of this year, which are down 15.2 percent, and we are talking here percentages, you are talking about 13,000 or 14,000 burglaries which did not occur, which were not committed—small percentages but big numbers, using a big base.

This reduction can be attributed to two robbery related phenomena: First, we had that 12 percent increase in robbery arrests that I discussed before. We believe that roughly 35 percent of those that are arrested for robbery—we do not only believe this, we know this for fact—have previous burglary arrests. Criminals are not really that highly sophisticated as the movies like to make them out. They are burglars, they are robbers, they will steal cars, they will take a purse, they will do a lot of things, so if you lock them up for robbery you have had the effect of locking them up for a lot of other things that they would have committed, thereby decreasing those crime rates as well.

Senator D'AMATO. They are multifaceted individuals.

Mr. TRAINOR. Absolutely, criminals of opportunity.

Second, the robbery target areas that we selected were also burglary areas, and also were just high-crime areas in general, so if you put cops on foot in those particular areas and you label it an antirobbery program, you might as well call it antiburglary and anticrime. It really does not matter. It is anti-everything.

Under the central robbery division, other existing department programs have been expanded and new concepts tested and developed. The felony augmentation program which the police commissioner had alluded to before, which was instituted on a pilot basis in Manhattan in March 1980 as a controlled experiment in target case enhancement focuses on the offense history of the defendant, career criminals, and a narrow category of criminal behavior, namely street robbery. The program was expanded citywide in December 1981. What the program does is explicitly marries police and prosecutor criteria in both the targeting and enhancement processes. As such, it seeks to responsively address rising violent-crime rates during a period of severe resource limitations throughout the criminal justice system.

Clearly, the longer habitual violent felons are in prison, the fewer felonies they commit upon innocent citizens in society. Felony augmentation, therefore, seeks to work within the existing criminal justice system and its present resource constraints to strategically reduce violent crime over time through the process of career criminal identification, arrest, and incarceration.

In a study that was done jointly by the department and the New York City Police Foundation in 1981, there was strong evidence of not only higher indictment rates but higher conviction and incarceration rates for cases that were augmented under the program. For example, the program registered a 59-percent indictment rate versus a 20-percent citywide indictment rate for nonaugmented cases. It also sent 64 percent of those convicted of a felony and incarcerated, sent them to State prison versus 51 percent for nonaugmented cases. By the way, the current indictment rate for the program is roughly about 72 percent, a very high indictment rate.

In a more recent study—and this is more to the crux of the issue, Senator, I believe—we analyzed cases which were augmented between January and July 1981. We found that 63 percent of those violent criminals were still incarcerated from the time of arrest. From the point that we started locking them up and augmenting them back in January to July, roughly 63 percent of them were still in jail. Some were awaiting trial. Some were already sentenced. Others were convicted. Others were awaiting sentencing. Clearly this significantly reduced their availability on the streets and, indeed, is partially responsible for the reduced number of committed robberies.

The other program which the police commissioner did not allude to was the robbery case enhancement program. Originally this was piloted in the 43d precinct in the Bronx. Right now it is expanded to 22 of the most serious robbery incident precincts. The object of this program is to provide followup investigation and case-building by detectives of specified robbery arrests in the preparation of investigative reports which are now forwarded to the district attorney's office before the defendant is presented for arraignment. This is done in order to provide a better basis for tracking and other decisionmaking regarding the ultimate handling of the case. That program has a 54-percent indictment rate.

Another program, and I believe you will probably be hearing more about this in years to come, I think, is the robbery identification program. This program was first piloted in the 90th precinct in Brooklyn, in Williamsburg, back in December 1981. It is now expanded to five precincts, five other precincts throughout the city. The robbery identification program or RIP as it is called by the cops, combines personnel from the precinct anticrime—those are the civilian-clothes officers—the precinct detective unit, which are the people who ordinarily investigate all types of crimes within a precinct, and the central robbery division—that is the borough robbery squad. It has them in a combined effort to identify and apprehend the perpetrators of robberies throughout the 90th precinct.

The way it works, is that it is a specialized unit within each of those designated precincts, consisting of approximately 12 investigators with sole responsibility for the investigation of all robberies committed within those precincts. In that way it is different from the way it operates now in any other precinct of that size. In the 90 percent, normally you would have 12 detectives who investigate everything—homicides, robberies, burglaries, the works. Right now in the 90th precinct there are 12 detectives—not all detectives (gold shields), but 12 people made up of anticrime people (white shields), precinct detectives, and also central robbery people—who do nothing but investigate the crime of robbery, specifically, that particular crime.

They also utilize precinct-oriented photo books consisting of persons previously arrested for the crimes of robbery, possession of guns, and grand larceny from persons within the same geographic area. Each precinct reviews its arrest records and identifies approximately 1,200 individuals. Photos are then obtained and placed in viewing books by zone, gender, race, and age. Victims of robberies are immediately brought into the local precinct and view those books for possible identification.

Currently, right now we have been using a system known as the CATCH system throughout the city. It is a computerized photoarray system that operates out of the detective area office. What happens, unfortunately, is that it is centrally located within Brooklyn. If you know Brooklyn, it is operated in the 67th precinct. However, the problem with that is if you happen to be robbed in the 90th precinct, you may not want to go to the 67th precinct and pick out photos, especially after you have just been robbed—you are going into a strange area, the parking facilities there are not that good. It presents problems to the victim.

This is completely different. As soon as the robbery takes place, the RMP—the radio motor patrol car that responds—takes the person, the robbed victim, into the station house where they view a limited number of photos. The program also includes an innovative case management system which insures the prompt, thorough, and flexible investigation of robbery complaints and which facilitates supervisory control.

During the pilot stage, robbery incidents were reduced by 42 percent: That is 42 percent less robberies from December to May of this year in that particular command compared to the same period the previous year, while the number of robbery arrests remained just about the same. As a result, the ratio of robbery arrests to complaints has been significantly reduced from one arrest in every six complaints to one arrest in every three complaints. The ongoing expansion effort into the five other precincts is designed to replicate those very positive results.

The last program that I would like to mention is the PROTEUS concept. This program involves the saturated deployment of uniformed officers into a core area and civilian-clothed officers at the perimeter. At 3-day intervals their geographic deployment is switched, thereby introducing an element of uncertainty into the criminal population. Through the month of December 1981 to May 1982, robberies were reduced 28 percent in that experimental sector in the 71st precinct in Brooklyn where it has been operational.

In summary, I believe we have demonstrated that by a combination of innovative patrol and investigative strategies utilizing existing resources, we can and have had a significant effect on the number of robberies that occur. The infusion of 2,600 new police recruits into our force at the beginning of this July will further fortify our efforts against crime.

The decreasing rate of violent crime across the board for the first 5 months of this year is indeed encouraging but it is incredibly difficult and not at all comforting to quote statistics to a recent victim of a robbery or a rape, or to tell the mother of a homicide victim that murders are down this percent or that percent, even if those few percentage points represent thousands of uncommitted robberies. New York City has crime and, like many urban centers, a lot of it. The fact of life is that perhaps there is some light at the end of the tunnel. Perhaps our efforts are finally bearing fruit. I personally am optimistic. I believe we have turned the corner. I believe with the proper utilization of resources we can and are showing results.

However, one large piece of the puzzle is still missing and that is jail space. With only 25,000 State prison spaces available and a felony arrest count of approximately 102,000 felony arrests a year in New York City alone, the proper separation of those individuals from the law-abiding public remains the No. 1 criminal justice issue of our time.

Thank you.

Senator D'AMATO. Thank you very much, Inspector.

Chief Kelly, I would first like to congratulate you on your recent promotion. I understand this is your first day with the new command, first working day, that is, and we are delighted to have you with your vast experience and background here giving testimony to us.

STATEMENT OF CHARLES KELLY, ASSISTANT CHIEF, NEW YORK CITY POLICE DEPARTMENT

Mr. KELLY. I have completed 34 years of service this past July. I have a prepared statement here, and it has to do with the narcotics problem in New York City, essentially. I just completed 4 years in command of the Narcotics Division of the city of New York. Our primary responsibility was to attack the narcotics problem at all levels in the city. I am sorry if it does not meet the requirements of the theme of the committee right now but in my 34 years and particularly the last 4, I have seen where the narcotics problem has impacted tremendously on the small business community, on community people in general, on neighborhoods. It has destroyed neighborhoods wholesale. In fact, when the street dealers appear that is generally the first indication that a community is gone, and it is a cancer.

In fact, the situation in narcotics trafficking has worsened, particularly in the last 4 years, I would say, because of a lot of reasons. I will only give you one or two simplistic reasons. There are a lot of reasons, social reasons, the breakup of our family life, perhaps, the erosion of our values. It was mentioned here before about family life, and I think we were talking about the police officer in the good old days who used to come along and say, "All right, you undesirable," or "you unruly kid, you are going to leave here."

Well, for one thing, the cop enjoyed an authority figure that he does not today but I think it was because his authority was buttressed and supported by the family, and the police do not get that any more because in the family they have lost much of their authority figure. Of course, this has impacted toward law enforcement.

I have a prepared statement. I will not read it if it is OK with you but I——

Senator D'AMATO. I will see to it that that statement is placed into the record as if read in its entirety but, Chief, I certainly would be most interested in your observations with respect to narcotics and the impact it is having in our battle to keep an environment that is crime-free or free from the intrusion of crime into our every way of life.

At some point in time I intend to ask the inspector what percentage of the crime does he attribute to narcotics. That was one of the questions that we had, how much of a robbery and burglary problem is related to narcotics. Therefore, we certainly are interested, and your appearance here and your testimony is most appropriate. We are interested in your observations in regard to this.

Mr. KELLY. The narcotic trafficking situation has gotten, I guess it has gotten so bad in the last few years that it is almost—we are forced into a holding pattern in the cities, particularly in New York. Because of our large seaport and our international airlines, it is a very adaptable place for smuggling, and because of our large population, diverse population. We have had people coming from all corners of the world here, where they can submerge. They are not under the direct scrutiny of the police as they are in many of the European countries where they must register, and our people have tremendous amounts of freedom to move around. They are mobile, and so the smugglers are quick to take advantage of our democratic way of life, unfortunately.

Now one of the things that probably helped the situation along to our detriment was the Marihuana Decriminalization Act of 1977. Unfortunately, a lot of our legislators believed in those days that marihuana was not really terrible, and some of our medical people in those days, perhaps because of a lack of real good, solid medical evidence, supported that and said, "Well, there is really not too much wrong with it." Anyway, the penalties for marihuana possession and use were severely reduced, and what this did from our perspective in the police department, it gave out a signal to many of our young people that this was not really so bad. It was not a crime anymore to smoke marihuana.

Well, that is OK. We do not object to that, an individual smoking marihuana. However, what it did was, it created among the criminal enterprise a whole new criminal group of networks that supply this stuff. Ten years ago in the United States perhaps a very small amount of marihuana was grown in this country. Today that situation has changed. There is marihuana growing all over the country and in some States it is a disgrace; it is one of their major crops.

That is only one situation why the drug situation is worsening. Another one is the fact that cocaine became——

Senator D'AMATO. My associate, Professor Ray, indicates—and he is a man who is gifted with figures—that it is the fourth largest cash crop in the United States today. I was not aware of that. That is a startling figure, I am sure. It is being grown today, Mr. Harris tells me, in 49 out of the 50 States.

Mr. KELLY. That is true but that is only one part of the problem. Now, getting into the hard drug area where cocaine suddenly became more popular with our lower and middle classes—cocaine used to be an exclusive province of the rich and show business type people but in the last few years we have been inundated with it and it has become very popular and almost tolerated and accepted as OK to be used by people in parties, social gatherings. Our professional ball players, unfortunately, who are supposed to be role models, some of them are involved in it, our professional football players, et cetera, et cetera, ad nauseum.

Therefore, what has happened again is, it has created a tremendous number of networks all over the world. In places like Colombia it is like the number one financial source of income, so the problem, as I say, at our level is one of recognizing what our problems are, trying to protect our local people, trying to keep the stuff off the streets, containing it if possible. What we did was, we organized special street enforcement groups all over the city. Where we once focused our resources at the higher levels, the Nickey Barnes type, we had to take a lot of our people and suddenly direct our efforts toward street enforcement because narcotics was becoming highly visible in many of our streets, many of our shops. Community leaders such as the ones who were sitting here before, they voiced a very strong opinion and they wanted us to do something about it, so we did.

In the last 3 years we have tripled our arrests. I could give you statistics that maybe would curl your hair about how many more narcotic arrests we are making but this thing still goes on. All we can do is really respond to a location like the fire department, put the fire out, and then move on to another spot. We have 800, 800 marihuana smoke shops in this city at last count. These are storefronts, and those are the storefronts that you will see appearing in neighborhoods as they start to go down; as the legitimate businessman moves out, these people move in and take over a store and they start selling marihuana and cocaine which of course further causes a decline in the neighborhood.

Senator D'Amato. You have identified 800 of these places throughout the city?

Mr. Kelly. 800, yes, sir.

Senator D'Amato. How do you respond to these, Chief?

Mr. Kelly. Mainly by complaints, by complaints. We receive complaints directly from the public, approximately 12,000 a year, and each one of them is reviewed in our narcotic units. We have seven units throughout the city in each borough. Each borough has at least one and perhaps two. Our narcotic street situation is much worse than you have in Nassau, and much, much worse than Suffolk and the rest of the counties. We have the biggest problem right here.

Therefore, we respond to complaints. I attend many community meetings, and I interact regularly between myself and the community leaders. They tell me where these places are. We go out, investigate them. We use a lot of video tape. We tape a lot of these locations and then we evaluate the business that is going on; we will make buys, direct buys; we will obtain a search warrant and then we will go in and dismantle the place.

These places are sophisticated, in that they have lucite things in the store 1 inch thick, and 1½ inches thick, just like the gentleman has in his liquor store, shields and barriers, where the fellow who wants to go in and buy marihuana has to stick his money through a hole in this lucite and then receive his nickel or dime bag. What it is, number one, it protects the store owner or the entrepreneur against robbery, ripoffs, shootings, but it also slows us down. When we go into the store we must get through that barrier to get at the evidence before he has time to dispose of it.

Senator D'Amato. Chief, you mentioned 800 of these coming into being. Are they being financed by organized crime? Is there an organized network that provides the capital and all that goes with it for the establishment of these, or are these individual entrepreneurs who are engaging for the most part in their own attempt to get part of the action, so to speak?

Mr. **Kelly**. It is a mix. We have some organized networks dealing, supporting these stores. We do have them. Some of them are islanders who belong to the Rastafarian cult, and they are organized, and they have networks that reach into Canada. Some are freelance entrepreneurs, though. Some of them support themselves. A store in good location is good for an income of $20,000 a week, easily, of untaxed dollars. Therefore, some are organized and some are not.

We find this in all the areas of drugs. Even in heroin you have some organized networks and you have some freelance people, too, and the same for cocaine.

Therefore, as I say, what we have done is switched our priorities from the high level down to the midlevel, the ounce people down to the street, and we think that we have been at least meeting the priority that is given to us by the public in trying to keep their neighborhoods as clean as possible. This has been the police commissioner's priority. It was my priority when I first took over 4 years ago.

The local shopkeeper and the guy who lives in the neighborhood, whose kids go to the neighborhood school, is not so much concerned with Nickey Barnes—although he should be but really he is not visible. What is visible to him is the guy on the corner of the school selling nickel and dime bags to his kids, or the store in the neighborhood, and also the guy on the corner who is pushing $10 or $20 foils of cocaine or heroin. That is his priority and that is what we try to respond to.

Senator **D'Amato**. Are your arrests up?

Mr. **Kelly**. Oh, yes, they are going up and up and up. For example, in 1979, my first full year in command, we had a total of 4,300 narcotic arrests. Last year we topped 15,000, and this year as of July 1 we just finished about 13,000.

Senator **D'Amato**. Is the profit such, or is it as a result of addiction, that there seems to be an army that is ready to take the place of those who fall by way or arrest and conviction? By the way, what about convictions?

Mr. **Kelly**. I was waiting to get to that. It is as bad as the rest of the criminal justice system. If we take in a man and indict him, that is the biggest barrier we have. If we can get a drug peddler indicted then chances are he is going to average from 1 to 3 years in prison, if we can get him indicted. Now Sterling Johnson's court helps us with that. Their indictments are increasing each year as our arrests are increasing but we are pulling in so much of the low-level type of marihuana salesman and coke salesman, and the courts and the DA's screen these very carefully. Where they can they will plea bargain it away: The courts will accept a guilty plea and he will be given time served as a sentence, which means whatever he did in our central booking is his sentence.

Therefore, on one hand we have an army of street level dealers who go in and out of the system frequently but then when we indict the upper-level people and the people who are dealing in ounce weight, we do get good sentences. As I say, we average 1 to 3 years.

Senator **D'Amato**. Do you have a feeling that there are improvements that could be made to aid you in this battle?

Mr. **Kelly**. Well, some of them have been put in place by the Government. I do not want to bail out, like so many other police officials do, and blame everything on the Government, but I think in narcotics it is absolutely essential that there must be control at the source countries. As to the international deals, that stuff has to be prevented from being grown and cultivated, No. 1. All hard drugs in this country come in from overseas, with the exception of maybe PCP and some of that other stuff that anybody can make, but when you talk about heroin and cocaine it is all coming in from overseas. International control is absolutely essential.

Where we did have some cooperation in the last 10 years in Turkey and Mexico, you saw the result on the street. There was less heroin on the street, less addiction, less crime, but then the floodgates opened up again in 1979, 1980 when Southwest Asia started cultivating more heroin again, from Pakistan particularly, and that was the beginning again of a whole new cycle of narcotic problems.

Therefore we must, No. 1, start with international control and, No. 2, strengthen the DEA, which I saw happen by joining it with the FBI. That was another good step that was made there.

Senator D'**Amato**. How was your control, Chief, with the—I should not say "control," what is it?—your rapport, your working relationship with the Federal people? Has that improved lately? There has historically been at least the opinion that the relationship between local law enforcement officers and their Federal counterparts is not what it should be.

Mr. **Kelly**. I had the same sense when I took over the job, and of course there is probably some truth in that prior to the last few years. I think there has been a tremendous improvement in our relationship, a tremendous improvement, I think because those of us who got into a position to do something about it, did something. We got together with our DEA counterparts and we ironed out an excellent system where we share intelligence in the city. It is one of the few places in the country where we actually have our own unified intelligence division between us and the Feds. We work cases together. They lend us money when we are broke, which we pay back, of course.

Senator D'**Amato**. Don't let David Stockman hear that. I mean, do you pay it back with interest?

Mr. **Kelly**. Oh, no. [Laughter.]

Senator D'**Amato**. Well, he will be here.

Mr. **Kelly**. If we need a flash roll on a big case, one-half a million or 1 million, we get it from them but more importantly, there is a better relationship than there was formerly.

Therefore, as I say, international control, we have also got the armed forces involved, thankfully. I see where that is done now, helping against the smuggling, especially in Florida. That is an initiative that took place that is going to help us, and then I guess the last thing would be to strengthen the DEA and our task force that we have in the city. We have a Federal-New York City police task force that work together very successfully in the city, and I would recommend that that be expanded and strengthened.

Aside from that, as I mentioned to Mr. Ray, more jail space, and as the police commissioner very appropriately mentioned, the problem of streamlining, streamlining our courts. It is unbelievable that a man accused of a serious crime can get bail of $200 and then get 18 adjournments, and of course this wears down the complainant, it wears down the witnesses, and it is self-defeating. Therefore, I would say streamline the system and more jail space would certainly help.

Senator D'AMATO. Thank you very much, Chief.

Inspector, before I go on to our other panel I would like to ask you specifically, have you been able to get any figures or statistics on how many of those robberies and burglaries—maybe the burglaries would give you a tougher time—how many of them are drug-related, related to narcotics?

Mr. TRAINOR. It is difficult to pin that down in a documented sense. We have done some studies on the issue and we are getting this really from word-of-mouth from the people that we arrest: Are you or are you not a heroin addict? Do you have tracks?—by visually scanning them—and it is about 10 percent in the area of robbers and a little bit higher for burglars, 14 to 15 percent.

However, you have to be careful that they are not telling you the truth because if they tell you they are a heroin addict, they go into the program when they hit Rikers, so you have to be a little bit careful when you take that kind of a statistic.

Most robberies, most burglaries that are committed, it is like that old thing with Willie Sutton: Why do you go to banks? Because that is where the money is. That is why they commit robberies, because that is where the bucks are, not necessarily just for heroin but for other kinds of things: Taking a girl out, not working, everything that you want money for, to run your house, that is what they rob for, for money, for bucks. You do not necessarily have to be a heroin addict. They could want other kinds of drugs, grass, cocaine, that kind of stuff, but it is for the money, not necessarily for heroin.

Heroin addicts present a particular problem to us, though, in that they have a particular nut to reach because they are addicts. They need their $200, their $250 a day to make their thing, so whether or not they hit five people during the day that makes up the $250 a day, they are in, they do five robberies.

Senator D'AMATO. Therefore, Inspector, that would lead one to the next question because you have kind of framed a format for that: If an addict needs anywhere from $50 to $250 a day for his or her habit, and recognizing that most of them are not high-priced people in areas of endeavor that they can go out and legally obtain this kind of money, they are forced of necessity to do one of three things—either enter a detoxification program, and that is a small number that could do that; second, to get the money legally, and again we say that this is a relatively small number; and, third, to get it by any other means if they can, and that is the crime.

Therefore, let me ask the chief: Chief, how many addicts, hardcore addicts, do we have who are not in, let's say, some kind of control situation where there is a methanone program or another program that we actually know that they are going to? How many do we have in the city?

Mr. KELLY. Again, I do not think I have that information. Let me just say this, that Temple University completed a project on heroin addicts' relationship to crime, I think it was in 1980, and their study showed that of 243 heroin addicts, they were responsible over an 11-year period for about 500,000 crimes. Most of them were thefts. They did not break it down in categories but most of them were thefts.

In the city, of all the information we have available from our State substances abuse agency, our health department, they feel there are about 145,000 heroin addicts, 145,000 to 155,000, in the city but that is also subject to some guesswork, too.

Senator D'AMATO. Well, if you were to say anywhere from between 100,000 to 200,000, that is pretty broad but that gives you some kind of idea of the scope and magnitude of the problem, anyway.

Mr. KELLY. Yes, and as Jim said, we did some research on our people who were arrested for robbery, burglary and the like who might have been addicts. In the police department when you arrest a person, part of the process, part of our written process is that we ask the prisoner, among other things: Are you an addict? He may or may not answer in the affirmative. If he answers yes, that is noted. Of the people who answered in the affirmative who were arrested for robbery, as Jim mentioned, only about 10 percent, 8 to 10 percent of those people admitted to it.

Now they may change their minds later on when they get into the system. It may help them before the judge if their papers are marked as an addict. They may feel they are going to get a better break, you see, so the hard evidence, the hard information on who is an addict is just not available. It is kind of elusive today.

Senator D'AMATO. Well, do you feel that that study done by—was it American University or Catholic University?

Mr. KELLY. Temple.

Senator D'AMATO. Temple—is it a pretty reliable study?

Mr. KELLY. Yes, I believe it was, although there again, you know, it is subject to what the addict is going to tell you. In other words, they got their admissions and everything by talking to these people, and they are not the most reliable types, either.

Senator D'AMATO. Well, of course, not all robbers are heroin addicts but almost all heroin addicts are robbers.

Mr. TRAINOR. Or burglars.

Senator D'AMATO. Or burglars.

Mr. KELLY. I think more burglary and petty theft than robbery. I would say——

Senator D'AMATO. Well, that petty theft is also the purse snatchers and the chain snatchers and the push-in artists, and so I think it is fair to say that it does degrade the quality of life and that feeling of security, the fact that we have so many thousands of these addicts on our streets who do prey upon society to support their habit.

Let me thank both of you and say to you that this committee is most interested in attempting to see what we can do, not only because small business as an integral part of the fabric of our society, as I indicated before, lends color and variation to our communities, to our neighborhoods, and is important for our economic health and well-being, but because it is what we are about and have been about. To see our neighborhoods destroyed and society sink into this helpless kind of feeling, and accept that we cannot do anything, that there is nothing we can do, is not something to which I subscribe. I think we had better at least try to do something, and some recognition of this on the part of the Federal Government coupled with an intelligent allocation of our resources, our local resources, is important. To that extent, this committee will attempt to prepare a report back to the Congress that gives some credence to this and which also reflects the professional expertise that both of you and your associates over the years have acquired in this battle.

Sometimes you have to feel that you are all alone out there, and it has to be almost debilitating to the effort, but let me assure you that we know there are no instant solutions. We certainly would like to do whatever we can to aid in your battle against robberies and burglaries and the addict problem that we have, and the crime that is caused as a result of this. I am both heartened and disheartened at some of the things I learned here today but that is part of this process, and we certainly thank you. We look forward to continuing our efforts with you together.

Mr. TRAINOR. Thank you, Senator.

Senator D'AMATO. Thank you, Chief. Thank you, Inspector.

[The prepared statement of Mr. Kelly follows:]

STATEMENT BEFORE SENATOR D'AMATO, AUGUST 16, 1982

BY:
CHARLES H. KELLY
COMMANDING OFFICER
NARCOTICS DIVISION

The history of the New York City Police Department's involvement in the fight against drug abuse reflects a long and serious commitment to curtail the problem. City and State administrations over the years have implemented social reforms, introduced various legislative enactments and experimented with diverse enforcement approaches, but in spite of our past and present efforts, we continue to be faced with a problem of monumental proportions.

Although numerous social programs, enforcement initiatives and legislative enactments have been undertaken during the past two decades, it can be stated that we are no better off today than we were twenty years ago. To put it mildly, abuse of drugs by our citizens, young and old alike, flourishes.

In 1981, New York City Drug Enforcement Authorities seized drugs with an approximate street value of three hundred million dollars. It is estimated that 10% of all drugs smuggled into the country are intercepted somewhere between importation and consumption. If we apply this formula to New York seizures, we find a multi-billion dollar annual expenditure for drugs within the metropolitan area alone. These dollars, when multiplied against seizures for the rest of the United States indicates a staggering drain on our system. To counteract this huge expenditure of monies in the illegal marketplace, it has become necessary to divert budgetary funds from medical research, education, training of the unskilled, care of the aged and other positive social programs, and into reactive law enforcement.

Law enforcement has been in the forefront of attempting to stem the flow of narcotics into our country and into this city. During the past decade, over one quarter million narcotic arrests have been made by the New York City Police Department. In 1981, my department effected more than 26,000 arrests for narcotics violations. We also seized 143 pounds of heroin, almost 200 pounds of cocaine and 7,000 pounds of marijuana. We take pride in our ability to seize, remove and destroy these substances from circulation. But it is estimated that enforcement interdicts only 10% of the available narcotics. Consider the 90% that defies our efforts and ultimately reaches the consumer. Availability of drugs and abuse by our citizens flourishes in our community.

Our experience indicates that local law enforcement cannot, by itself, eliminate illegal marketing in drugs. The vast profits involved, the expertise of those willing to risk apprehension, the seemingly inexhaustible source of supply, the world-wide nature of production, the almost infinite number of import points available, and the growing social acceptance of such drugs as cocaine and marijuana add to the burden of already undermanned municipal police agencies faced with increasing crime rates and demands for service.

For example, our experience indicates that many frelance entreprenuers, not connected with traditional organized crime networks, are dealing in kilo and pound weight heroin, cocaine and marijuana, to which they apparently have easy access. My department has arrested major drug dealers who have no previous arrest record. In fact, some of them are successful business people, including clothing manufactureres, restaurant owners, fashion designers and the like.

Also, narcotics addiction, particularly heroin, affects the lives of non-users, in significant ways. In an in-depth analysis of heroin addicts residing in Baltimore, Maryland, prepared by Doctors Ball, Rose,Flueck and Nurco, in 1980, it was found that 243 individual addicts within the area studied were responsible for approximately one-half million crimes during an eleven year period. The crimes involved were largely burglary, larceny and robbery, the type of crimes that effect the average householder and small business person who is struggling to survive.

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If we project this study nationally, a situation for serious concern becomes clear. For those who continue to believe that drug usage is primarily confined to the ghetto areas and does not impact on the everyday lives of the working middle class, I would like to adivse you of undercover video tapes taken of street drug activities by the New York City Narcotics Division which show that white collar employees, including junior executives, comprise a significant portion of the illicit drug market operating in the financial district. These are the same people we entrust with our savings, investments and, in many cases, our financial future. For those who believe that drug usage is a harmless mode of recreation designed to provide a needed "up" or "down" as conditions dictate, I refer to the 534 overdose deaths in New York City for the year 1980 and the tragic demise of several celebrities who serve as models for our society. For those who downplay the effect of occasional cocaine usage, I point to the 11,350 cocaine-related hospital admissions experienced throughout the country in 1981. In fact, according to results published in the Alcohol, Drug Abuse and Mental Health Administration Newsletter, cocaine-related admissions accounted for over 4% of the patients at the 2,100 federally-funded clinics. These admissions are directly related to a substance whose production is foreign to our soil and must be smuggled in.

I strongly remind you that none of the circumstances outlined are a consequence of a product developed within our country. With the exception of a small percentage of marijuana, all of the "Drugs of Choice" utilized in the United States are brought in through clandestine and illegal, operations. We are, in essence, victims of those who inflict a virus on our society while escaping the ramifications of this social sickness.

In spite of thousands of police actions per year via summons or arrest, the city is plagued with a small army of marijuana dealers who infest our parks, commercial areas and amusement centers. We are inundated with 800 "Smoke Shops" or bogus store fronts operating throughout the city that deal marijuana on a continuing basis. Many of these shops are in close proximity to small businesses and because of the obvious drug traffic serves to discourage shoppers from patronizing their local business area.

The problem is a pervasive one, from California to New York, from Mexico to Canada. Drug trafficking does not recognize state lines or international borders. It is not confined to one corner of our country or to one segment of our society. The federal government therefore must accept a stronger leadership role if we are to stem the rising tide of drug abuse. Drug abuse must be identified as a national problem. It requires the federal government to exercise its full range of available economic and political sanctions against those producing and processing nations which would profit from our ills. Both the executive and legislative branches of government must become involved if we are to achieve and maintain a safe, drug free society.

United States economic assistance programs should also be carefully re-evaluated. Countries profiting from or allowing open drug cultivation should be excluded, in addition, treaties should be examined, re-negotiated where appropriate, and pressure should be placed on governments which express an unwillingness to deal with processing plants operating with virtual immunity within their borders. A concentrated attempt should be undertaken to interdict illegal imports coming from source countries such as Iran and Afghanistan where crop/income substitution programs are politically infeasible.

In proposing a philosophy of complete involvement of resources, it is further recommended that all branches of the military become increasingly involved, in both supportive and operational functions, in the task of intercepting air and sea vessels suspected of carrying contraband.

The United States must also serve as an example to others and lead the way in healing ourselves by developing effective rehabilitative programs and by exterminating domestic marijuana crops. It is unrealistic for us to seek assistance from our global partners if we cannot display a self-initiative worthy of imitation.

Finally, it is my contention that no discussion on narcotics abuse and control would be complete without comment on preventive programs. If we are committed to making America a society free of drug abuse, we must start with the education of our children at the earliest age. We all agree that the youth of our nation is the future of America. It then necessarily follows that there must be a national effort to provide them with first-hand knowledge of the effects of drug abuse and the dangers that it presents to them. Parents must be assisted in their guardianship roles through education of the symptoms and results of drug abuse by the young. This is not an easy task. Our commitment must be total. It will call for dedication, perseverance and involvement at all levels of government with coordination and assistance coming from existing federal agencies.

Once a child reaches high school, he or she, in most cases, has already been exposed to drugs. Therefore, to provide the greatest impact, drug prevention programs should be designed for and incorporated into the primary school education system. As our children mature, they should be exposed to updated material selected for their age group. This will serve as a constant re-enforcement of ideas and a reminder of the dangers present in our society. Classroom teachers exercise a strong influence over their students and drug education material should be disseminated through them. Educators can obtain the proper expertise through seminars conducted by law enforcement and health officials.

We in New York City have been totally supportive and involved in all efforts to eradicate the drug problem. We are attacking it through law enforcement, rehabilitative programs and education, but at best we are merely on a holding pattern.

THANK YOU.

Senator D'AMATO. We will call the fourth panel, and I thank them for their patience: Eae Mitchell, president of the 42d Precinct Community Council; Jeremiah O'Shea; and Frances Seward.

Let me thank the panel very much for their cooperation in participating. Someone is first and someone is last but the last shall not be any less recognized in our endeavor to focus in on these problems than the first. I assure you of that.

Therefore, Mr. Mitchell, I know that you are president of the 42d Precinct Community Council, and let me thank you again for not only being here but for talking with our staff and working with our staff so that you can share with us your perceptions of what can be done and what should be done and what the status today is in terms of crime as it relates to our communities.

STATEMENT OF EAE MITCHELL, BRONX, N.Y.

Mr. MITCHELL. My name is Eae Mitchell, and I am not only the president of the 42d Precinct Council, I happen to be a businessman living in an area where my business is. I have a whole city block which I invested in in 1974, quite a bit of money. I invested approximately $68,000 of my savings and my mother's savings into this neighborhood because I saw there was hope. I was the vice president of the 41st precinct and we were getting very good service at that particular time, wherein we sort of stabilized and organized groups, that the community was doing well.

However, after rehabilitating that community not only I but many others—the Federal Government came in and brought in section 8 buildings—we felt quite proud to bring in new people to the area. However, we have found that due to the breakdown of law and order, the morality of the people again is beginning to be the same way it was back years ago.

The major problem I see is the criminal justice system. I have right here a bruise that I will carry for the rest of my life, four stab wounds under my arm and one in my neck, in attempting to protect my business and my employees in 1979, wherein they were arrested. However, I was the criminal and this is very regrettable when I had to go to court 20-some-odd times and this young man got 6 months for almost taking my life.

Now last night, unfortunately—I did not want to bring this up but I think this is something that they can see that people in the community now are tired of the dope, the marihuana and what not—you will read in the media today that someone, a parent, apparently has committed a crime and has hung two boys for giving her two sons dope. We have been pleading with the police department to close these places up but this is the situation that has happened in many of the communities, when in 1968 I moved into a very nice area, I felt.

There were momma and poppa Italian and Jewish stores, and as the people migrated in they sold them over to the black and Hispanic community which it is today but those people had to give up for the marihuana stores and the policy joints—numbers operations, if you know—which is making a big mockery of the city, State and Federal governments.

We are not benefiting. I pay—and believe it or not , I have been here to court for various problems, tax problems—I pay my taxes but these people are benefiting, have better establishments than I could ever afford. I put in cameras and plexiglass to protect my girls who work for me at great cost. However, these people have plexiglass and guns and they are opening up every day, depriving the community of a sense of morality.

I feel that the Federal Government has to aid the local government with the funds so that we get more foot patrolmen and persons that can actually stop these things from destroying areas because in these areas it is only Federal, State, and city financing mostly, and a few people like myself that have invested their money. Because of this, Senator, I felt I was going to leave. However, if I find that this committee is able to and will be doing something, I am going to stick it out in the South Bronx because I feel it needs more people like myself and others.

Senator D'AMATO. I thank you very much, Mr. Mitchell, for coming in. I would like to come back to you for several questions, if I might.

Mrs. Seward, Frances Seward.

STATEMENT OF FRANCES SEWARD, JAMAICA, N.Y.

Mrs. SEWARD. Yes, Senator, and good afternoon. Thank you for the pleasure of this opportunity to testify before the Subcommittee on Urban and Rural Economic Development.

I reside at 168-34 127th Avenue, Jamaica, Queens, in a large middle-income co-op that is really infested with crime. I work as a social worker for a nonprofit social service agency in the capacity of director of the safety program, which involves five local precincts out in southeast Queens—the 103d, the 105th, the 106th, the 107th, and the 113th. Of those five precincts, the 105th—I am sorry, the 103d and the 113th are very traumatized precincts. That is, they are high in violent crime perpetrated against the residents of southeast Queens, especially the elderly.

Senator D'AMATO. What communities, Frances, does that take in when you say the 103d and the 113th?

Mrs. SEWARD. That is planning board 12, Senator, which includes Springfield Garden, South Jamaica, Hollis, South Ozone Park, and the Rochdale community, as you know, which is the second largest co-op in New York State and even in the world, which is a very high crime area. Jamaica at one time was thought of as a lovely place to live and a very safe place to live. People migrated to Jamaica with these conceived ideas. Today, however, it is not that way in all the residential areas. Some residential areas are still beautiful, with tree-lined streets, and a little safer than other places.

Our last census noted that there had been an increase in the elderly population from 30,000 to 70,000 but a decrease in the younger population coming out to Jamaica. If you were to walk down the streets in Jamaica in the shopping district, you would see inferior shops because all the major department stores have moved away, including the theaters. There is no movie house to go to, and if you choose to go to one in the surrounding area, it is a very inferior kind of theater, those kinds that you can go to for $1.25 that you would not encourage anyone to go to.

I truly believe, Senator, as a social worker, that economics is the bottom of the problem with unemployment, poor housing, poor education, and most of all crime being symptoms of this problem. What has happened—and this is my own personal analogy—is that crime has become the overriding problem of this situation, and unless this country and the people who make the decisions in this country take the initiative and do some planning to correct this problem, I truly believe that we are going to be run out of our homes and our communities and there will be no safe place to live.

I feel that crime has had a baneful impact on the neighborhoods, the small merchants, as well as the citizens. What we have done in Jamaica in trying to address this infectious disease, crime, in the agency where I work we have, as I said, we have a safety program that was initially funded by LEAA. Of course, as you are aware the moneys from LEAA no longer exist and at this time we are conducting a safety program that is composed of two components: victim assistance and anticrime prevention. The victim assistance component is funded through the New York State Crimes Victim Compensation Board; that is addressing the problem after the fact but thank God that there is a program in place to deal with victims, the Victim Service Agency, which is a large agency in New York City that also provides concrete services to victims, and the agency that I work for, which is the social service agency specializing in services for the aged.

We address crime perpetrated against the elderly through counseling, financial assistance, transportation, and educating the senior how to proceed with the court problem. As you may be aware, senior citizens really have their problems in court. As a matter of fact, I have a case on my desk now of a lady who lives in the complex where I live, and she expects me to see her through the court system. To my amazement, because this elderly person has poor vision—she has been operated on for cataracts—I was conversing with the assistant district attorney and they tell me that it is not even worth it to put her through, to hear her story, because she is not competent enough to make positive identification. These kinds of aging syndromes are quite often the kinds of things that keep some of these youngsters on the street.

I am here today in support of what you would like to do. As a social worker I feel ambivalent in some ways about not allowing a person to have that kind of freedom on both ends of the continuum. However, I do think that we must take action to protect and secure those citizens who are functioning in the daily mainstream of life so that we all can live in a community with quality life. Thank you.

Senator D'AMATO. Thank you very much, Frances, for coming in and touching just briefly on how crime has impacted on the communities in Queens and particularly how it has had an impact on the quality of life as it relates to senior citizens.

Mrs. SEWARD. Yes.

Senator D'AMATO. They have had an excruciatingly difficult, difficult time, and live in great fear and dread, only going out at certain times, only under certain circumstances during the day with large numbers to help them, fearing to even go back into their apartments or maybe someone will confront them in the elevator or as they are opening their door or will be there waiting for them.

Mrs. **Seward**. Absolutely.

Senator D'**Amato**. It is an incredible situation that we see, and here we are almost powerless, it would appear, or certainly have not been making, I think, appropriate progress toward combating this. Again, this is not aimed just at New York. Our urban centers, our suburban centers throughout this Nation have this incredible dilemma.

Mr. O'Shea, I thank you very much and again I say to you personally, I apologize to you as well as to the others that you are panel number four. However, I am interested in your story because you have been interviewed by the staff and you feel very strongly, I know, that crime is the No. 1 problem that your community and our communities face today.

STATEMENT OF JEREMIAH P. O'SHEA, DIRECTOR, FLATBUSH TENENTS COUNCIL, BROOKLYN, N.Y.

Mr. O'**Shea**. Absolutely. Thank you, Senator.

The invitational letter to this hearing I think pretty much sums it up, along with the previous testimony, that retail outlets are fleeing urban neighborhoods at an alarming rate; that those businesses that do remain sometimes by necessity resemble armed forts; robbery, burglary, arson, shoplifting, and vandalism all drive prices up and business profits down. Neighborhoods and the businesses that serve them disintegrate when criminal activity becomes the norm or when arson destroys whole segments of the community.

I did not plan to start that way but rather than be repetitious, I thought I would since I am the last person to testify. Our organization is a tenant advocate organization. We are active in a great number of communities in southern Brooklyn, from the area around Prospect Park to Flatbush, Midwood, Sheepshead Bay, the Ocean Parkway community, and the area around Brooklyn College which is known as Junction College. Within those areas we have approximately 500 member-tenant associations that are affiliated with us in the council. Those are all volunteer committees and the thrust of our work has to do with preserving existing housing to prevent decay, within a framework of negotiation with the individual owners toward upgrading and basic services being delivered in each building.

It expands beyond that into the block and into the neighborhood. Our role has been consistently to encourage those volunteer committees in our membership to become involved within their communities. We are working in six different communities with four or five different community planning boards, a wealth of elected officials.

I attend personally probably well over 350 meetings a year, whether they are in lobbies of individual buildings or at community boards or civic associations and block associations. Three years ago or 4 years ago that meeting would be directed toward our principal involvement, which is housing. It no longer is in that direction at all. No meeting can get off the ground that relates to the physical structure of the building without the tenants or community people addressing the security problems of the building. They have come to expect that their building must also be an armed fort, that it must have the best possible type of lock on the front door. Currently we are recommending to owners the same type of lock that is used in the Tombs, the Tombs Prison of the city of New York; more lighting; steel side doors; roof alarms. Individual apartments are asking for recommendations on alarm systems within the apartment buildings.

It goes outside of those buildings and into the community groups and civic associations, the homeowners installing separate lighting in and around their properties, front and back. A friend of mine just bought a house in Flatbush and had to spend $3,000 to install a security system, just to be on the safe side, to protect himself and his family, and that in an area where there is a very, very active paid patrol and an active civic association.

These neighborhoods, all of them, are pretty much the same in one respect. What is true for northern Flatbush in a 100-percent minority area is true for Sheepshead Bay, which is lily-white. Everyone feels as though they are under siege; they are on the barricades; they are on the front line.

We initiated a pilot program under CETA funding a number of years ago and trained 16 young fellows in police procedures, together with the College of Criminal Justice and the Police Department of the city of New York. We installed a base radio in a separate office and trained these young men in police procedures and patrol, what to look for, and sent them out in pairs in specific areas that we had selected with the police precincts. These were areas that had a border of private homes, a central concentration of multiple dwellings, apartment houses, and near a business district and transportation.

We found that while that program was going on, the physical presence of these two men in uniform—who had no powers of arrest, nothing, all they had was a walkie-talkie to be in touch with our home base—had a dramatic effect. It had a dramatic effect within the buildings and the blocks that they patrolled, and it had a dramatic effect on the commercial area, one in particular, Newkirk Plaza in Flatbush, that was one of the main areas we concentrated on.

Wherever we placed them, we found and confirmed what others have said in this hearing before: That the presence of a policeman, that uniform, on the street cannot be measured in terms of what it prevents but I think we have come to the realization that in these days where we use a very, very sophisticated analysis of crime, I think, to measure the impact, what the direction has to be in terms of prevention, that this is what we have tried to do.

From that program and one other that was developed by Midwood Development Corp., which was funded under LEAA funds, there were a series throughout the Midwood community of tenant association lobby patrols which were extremely active and had great effect within the buildings. That program was discontinued, and certainly the CETA program was discontinued, and we came up with another one. This now is principally funded by the State of

New York. Senator Marty Markowitz of Brooklyn had the idea and it was put together by five different community groups: The Flatbush Development Corp., the Flatbush Tenants Council, the Midwood Development Corp., the Prospect Gardens Association, Ocean Parkway Development Corp., and the Junction College Development Corp.—which is six.

We have one central base station. It is located in the 70th precinct, within our area. That is close to the Ocean Parkway community. All these groups now have volunteer patrols, whether they are in cars patrolling within their own community or lobby patrols or block watches or walkers, but all of these patrols are equipped with some kind of modern communications equipment. The cars have radios, the walking patrols, the lobby patrols are equipped with two-way walkie-talkies.

We have found that in terms of the buildings and blocks in which they operate there has been the same dramatic drop, particularly in the area of burglaries in these neighborhoods and in these buildings. It has been extremely effective. I do not have actual numbers, which are in process at this point, but I do think that we will be able to come up with alarming figures, alarming in our favor against the other side. All of this has been done with the cooperation and the help of the New York City Police Department and it is under their jurisdiction, in effect. They supervise and keep an eye on how these patrols are run, how the whole program is effective, how it works, the mechanics of it. They make suggestions at times and change procedures.

Senator D'AMATO. If I might ask you, how long has this program actually been in existence?

Mr. O'SHEA. Well, we have been dealing with the original two programs on a pilot basis for a year and a half, and now for this last 8 or 9 months, definitely since September of this past year.

Senator D'AMATO. What would you estimate the cost of this program to be, the one that has been underway for the past 8 months?

Mr. O'SHEA. The one that has been underway is a $100,000 grant from the State Commission on Criminal Justice. It is called Operation Interface.

Senator D'AMATO. That will cover how big an area geographically and how many people do you say live within the——

Mr. O'SHEA. Geographically, it is probably one-quarter of the area of Brooklyn; in numbers of people, I would say a community of close to 350,000 people, maybe more, probably more. I am thinking in terms of my service area but it is probably close to 1 million people in South Brooklyn.

Senator D'AMATO. How many people do you have involved in the actual program?

Mr. O'SHEA. In our part of the program, oh, probably 150 to 200 volunteers in our part of it. Midwood Civic Action has been running their own program for some time, and I think they have in the area of 500 volunteers. The development corporation would add another couple hundred, the Flatbush Development Corp. at least another 100 or more.

Senator D'AMATO. Therefore, we are talking in the area of about 1,000-plus volunteers.

Mr. O'SHEA. Easily, easily.

Senator D'AMATO. Have you found difficulty in attracting volunteers to this——

Mr. O'SHEA. Absolutely, absolutely.

Senator D'AMATO. You have?

Mr. O'SHEA. Oh, yes. It is an ongoing problem.

Senator D'AMATO. How do you stimulate them, how do you bring them in, and how do you keep them?

Mr. O'SHEA. Well, the greatest organizing tool that we have is fear, quite frankly.

Senator D'AMATO. A very candid——

Mr. O'SHEA. Yes, it is very simple, very simple. We are not going to get more police. The people out there feel they are on the front lines, that they are alone——

Senator D'AMATO. Yes.

Mr. O'SHEA [continuing]. Just as the policemen feel, because of their limited resources and numbers, that they are bombarded from both the political and from the public end, they are overworked.

Senator D'AMATO. Now you are waiting at the present time for some statistics that are in the process of being compiled to demonstrate just how successful the program has been?

Mr. O'SHEA. Yes.

Senator D'AMATO. Have you gotten——

Mr. O'SHEA. The initial estimate on burglaries is somewhere close to a reduction of about 20 percent.

Senator D'AMATO. A 20-percent reduction in burglaries?

Mr. O'SHEA. This is really the area that we were shooting for because this touches everyone. Anybody who has been burglarized feels——

Senator D'AMATO. A personal invasion.

Mr. O'SHEA. Yes, that is a polite way of putting it. Yes. It is a very personal invasion.

Senator D'AMATO. Let me ask you this: What has been the effect in terms of arrests? The association and the group does not undertake this for themselves. They call the police. This is a link with the police to get a quick response, et cetera. Do you have figures on that? Is there any indication——

Mr. O'SHEA. I do not have figures on arrests but I do know there have been a number of incidents where a lobby patrol or a block patrol has spotted a suspicious character and then you have them call in. My organization is not the coordinator of this program. The Midwood Development Corp., and all of those stories and the horror stories feed in there, but in terms of the feeling that people have about where they live, in terms of the preliminary numbers which I do have which indicate a 20-percent reduction in burglaries in these areas that are covered, that in itself warrants the future development of the program.

It is our view that this program could be replicated. What we have is a great number, within each of each of the principal groups that are participating, there are subgroups: The Nottingham Association, the College Run Association, and numerous block associations that tie into this particular program, provide volunteers within these communities.

Senator D'AMATO. Let me share a thought with you: I fought to retain community development funds under the block grant formula. We kept maybe not enough, but $500 million nationwide. It would seem to me that one of the best investments of at least a portion of those funds might be in seeing to it that the communities that are built, the brick and mortar projects, have the active participation of the community in the defense of businesses and homes in their midst. How do you feel in terms of diverting or utilizing some of those funds in this area, neighborhood watch programs, et cetera?

Mr. O'SHEA. Well, I would absolutely—I do not like the word "diverting." My personal preference would be prevention, rather than from the other end. Prevention has to do with better housing, more employment, more creative employment, training. The areas that are severely impacted by poor services and poor housing become breeding grounds, breeding grounds for the type of youth—most of this crime is caused by youth. It is not a career criminal. A career criminal now could be 21 years old and be arrested 50 times. He is allowed to go that far because of a system that does not label him a pariah. In his neighborhood he is not that; he is an antihero. He has become a sort of a celebrity. Everybody knows him except the police, the lawful authorities. The permissiveness that we have allowed in our society has caught us all up.

I was watching a show the other night where a young man was in a Federal program, teaching him computer operation, very articulate, bright young guy, could not be any more than 19 years old, and somebody asked him, a reporter asked him what will happen if this program is cut back, and this boy thought nothing of saying, "If they cut it back, I'll get out my pistol and start robbing stores again." This is what we have allowed our society to become. I do not know that 10 years ago that anyone on television would feel free to say something like that but that is how far it has gone.

Nobody is going to get him, nobody is really going to do anything to him. That is a revolutionary statement and something that has to be noted. The Federal Government——

Senator D'AMATO. Well, the statistics bear that out. Again, only 1 person out of 100 who commit—and we are talking felonies, class A felonies, we are not talking some of the other things that we find intolerable, the purse snatching and chain grabbing, the burglars—out of 100, only 1 person will serve any time in prison, only 1 out of 100. That is an incredible——

Mr. O'SHEA. Well, that is another frustration for us. We are out there, the people are out there, as I said, on the barricades. They need constant motivation, as any volunteer group will, once the problem seems to be in hand, and then when it arises again they come together again.

Senator D'AMATO. You talked about attitudes, permissiveness, et cetera, and I think there is a certain amount of that. I cannot help but—I certainly do not want this to deteriorate into an argumentative point—but I know that Mrs. Seward, Frances, in her work feels very deeply about it and is very, very committed particularly as it relates to the elderly. However, when we talk about jobs and job training, I certainly do not diminish the importance of that opportunity, opening up opportunity so that people can become self-supporting.

However, I do share a certain feeling that there are those who can always find excuses and who will find excuses, that the fact that there may not be a job or a training program immediately available does not alter the fact that that is not and cannot and should not be an excuse to perpetuate antisocial behavior, criminal behavior, within our midst. There were many, many poor people when I was growing up in my community. We had, I would suggest, in many cases less opportunity than many young people today, including educational opportunities. There were no grants; there were no great horizons painted for us. There was a lot of sweat and tears and a lot of hopes, and some were dashed. Some never made it.

I would think that, not given today's relatively short period of economic downturn, but by and large, the incredible progress in terms of social programs, in terms of areas of opportunity in education, jobs, employment, right down the line, has been far beyond in the past decade that which existed 30 years ago or 40 years ago or during our parents' lifetime. Somehow an attitude has developed that the rights of others in society and individuals have been put aside for one's own pleasure, for what I want, for my instant gratification, for what my needs are: I need a new suit; I need a car; I need a this; I want to take my girl to a show.

Consequently, whether it is the old woman, the neighbor whose house I burglarize, or the store that I participate in the holdup of, that is secondary because people are more interested in their own immediate needs and goals. I cannot help but think that if we look to Government to provide all of the opportunities for individuals, that that is kind of copping out. It will never be, it never has been and never should be. Government should provide equal opportunity, provide opportunities for people who through their conviction of themselves, their own inner selves and their ability, can strive and can attain.

It seems somehow we have tragically erred, and maybe in our hope to overcome adversities that we had, the improverishment that many had, we take away basic opportunity and give young people the right to think that they are not going to have to sweat it out and work and spend those hours that many have, those hours that people may not have realized, whether they were studying for an exam or saving up those dollars to pay for a course or going through other things to see that we had clothes on our backs so that we could even attend school.

I do not mean to be argumentative but I think that we oversimplify if we believe the Government owes it to us to see to it that the economic situation is such that we will then avoid crime. I think we fail tragically in a basic responsibility of saying that those people who are good citizens and decent citizens, the vast majority of our society, that we allow them to be pilloried, and really they are being pilloried and brought down to the lowest depths, that they have to live, as you mentioned, behind prison doors in their own homes. They now look for locks, you recommend, your association, locks that are used in the prison for apartment complexes. It is incredible that people look for that, that we have to form armed associations to guard our own safety, in the pursuit of our own way of life.

Mr. O'SHEA. We have also in our community—which I think is almost an ultraorganizing community, if you are familiar with it, merchant associations and groups—the Newkirk Plaza area which was formerly patrolled by our initial pilot program has now hired outside security. In Borough Park where we also operate, they hired a professional patrol fully employed by the people in the community.

One of the things that has come up and was really only mentioned to me the other day in private, and I do not know to what extent it exists, I do know that when there is an opportunity and Government cannot fill the void that it will be filled, and in this particular case it appears that there is a criminal element that is insidiously slipping in to fill those void. It is not beyond belief that it may come to the old protection racket of the twenties, it may come up again.

Vigilantism is something that we have, through working with the police department, following their procedures and their guidance, successfully overcome, and we have had a few things happen like that. However, the Federal Government's role is not one that can easily be avoided. I am not worried about suggestions of diverting funds; we need money in housing, we need money to give us the ability to rehabilitate decent housing facilities, to give them a longer life; we have to deal with bringing services into the community, education for these young people, a revitalization of our educational process, all of the socioeconomic factors that lead to urban decay have to be addressed.

However, in the area of crime the Federal Government must provide leadership. It must declare a war on crime, and I mean a broad, broad campaign. It may have to do with the technical aspect but, quite frankly, it has to address the perception that exists across this country that the Federal Government plays no role, that there is no support, that we have an undermanned and overworked police department, and we have a State government that will now give us some funds to help self-help organizations. We have volunteers out there. We have been doing it ourselves for 11 years in the area of tenants' rights. We have been almost forced into this to protect our constituency, which is largely senior citizens. It became a need within housing and then within a community and a borough.

The Federal Government can do quite a bit with the mechanism of setting up a principle that we have to fight crime, that the criminal is the pariah, that he is an enemy of society, starting there. The other factors certainly have to be taken into consideration but a principle must be established. Life, liberty, and the pursuit of happiness, none of these are possible if we do not have life, if we do not have safety. The business communities, they will slowly deteriorate. I do not know where we are going to go. I frankly have more questions than answers.

Perhaps little things, perhaps tax credits for individuals that are forced to go out and buy protective devices in order to protect themselves, businessmen such as the gentleman on my right who has invested heavily to protect his own employees; expand Federal crime insurance to other communities where it can help because the businessman on Church Avenue and Flatbush Avenue in the area of crime has the same problems as the fellow in Sheepshead Bay who also has to have a buddy buzzer system and an alarm.

Senator D'AMATO. First of all, let me say that I am going to be using the evidence and the facts that we have gathered here today and will continue to gather and that our staff has been working on, to work for and to lobby and to use all of my power to help address this very sad state that we find ourselves in. I think that the dollars that we do not spend on making our communities safe—in the criminal justice system which includes the police, the district attorneys, the prisons, whether they be county or State or Federal, the rehabilitation efforts, the parole system, et cetera—the money that we fail to spend and allocate there is money that is tragically wasted, and I do not think there is another program on which a better dollar can be spent than to have it spent on the criminal justice system.

The sorry fact is that we have misused our allocations, and then we talk about the Constitution of the United States and the preamble that says, among other things, we come together to form a more perfect unit of government to provide domestic tranquility for our people. We have failed.

By the way, we spend only 8 percent—nationally, this is, State and local governments—only 8 percent of our government budgets are for the criminal justice system. Can you imagine that? Only 8 percent, and here we have this epidemic that we have been subjected to in the past several decades. This is not a recent phenomenon but we see it growing worse correspondingly, and the impact and the fallout from it traumatizing our citizens. That is what it does.

Therefore, when we have no peace of mind our perspective in life must be rather distorted. I think it is manifested in every way in which we conduct ourselves today or fail to conduct ourselves today: the fact that we are not good neighbors any longer with our brothers and with our sisters; the fact that business opportunity, whether commercial opportunity or opportunity for sharing a fuller life, has been infringed upon.

Therefore, I share that feeling; I see it, I live it with my own family. I have put certain communities and places absolutely off limits to my family, off limits, places that as a youngster I grew up, beautiful, incredibly wonderful places and experiences that I still recall so vividly not so many years ago, that I do not allow my two young sons and my two daughters to even be in those areas because of the fear that they will fall victim to the criminal element that has all but taken over, all but taken over.

Let me thank you, and say to you that this is not the last of these hearings by our committee. We are already embarked upon legislative proposals that hopefully will be enacted. I understand that there will be weeping and gnashing of teeth, maybe particularly from certain areas of the administration, Mr. Stockman and company, the OMB, who fights the expenditures or the increases of any moneys no matter what their purpose. However, that is the nature of the legislative and executive positions. We are not always supposed to march lockstep, and reasonable people even on the same sides of the fence can have disagreement.

I believe that we have not been spending and allocating enough of the resources of the Federal Government, as part of its program to be a good partner and, yes, kind of lead the way with Federal, State, and local governments working together, and I think we have an obligation to do that.

I want to thank ali of you for being here, Mr. Mitchell, Mrs. Seward, and Mr. O'Shea.

This subcommittee stands in recess.

[Whereupon, at 1:25 p.m, the subcommittee recessed, to reconvene at the call of the Chair.]

THE IMPACT OF CRIME ON SMALL BUSINESS

MONDAY, OCTOBER 18, 1982

U.S. Senate,
Subcommittee on Urban and
Rural Economic Development,
Committee on Small Business,
Albany, N.Y.

The subcommittee and the select committee met, pursuant to notice, at 10:10 a.m., in Albany, N.Y., Hon. Alfonse M. D'Amato (chairman of the Subcommittee on Urban and Rural Economic Development) presiding.

Present: Senator D'Amato.

Also present: Mr. Marino, State senator from the State of New York.

Staff present: Marc Smolonsky, investigator, Committee on Small Business; Jeremiah B. McKenna, counsel, New York State Select Committee on Crime and Correction; and Bruce A. Ray, staff of Senator D'Amato.

Also in attendance: Jeffrey Harris, Deputy Associate Attorney General, U.S. Department of Justice, and Peter Preiser, professor of law, Albany Law School.

STATEMENT OF HON. ALFONSE M. D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON URBAN AND RURAL ECONOMIC DEVELOPMENT OF THE COMMITTEE ON SMALL BUSINESS

Senator D'Amato. This is a joint hearing of the U.S. Senate Small Business Committee and the New York State Select Committee on Crime. I am joined by State Senator Ralph Marino, who is chairman of the select committee, and Mr. Jeffrey Harris, the Deputy Associate Attorney General from Washington.

Our hearing today is the second in a series being held by the Small Business Committee, on which I serve as chairman of the Subcommittee on Urban and Rural Economic Development. Our purpose is to explore in depth the crime problem which plagues this Nation, with particular attention to its effects on the small businesses of America.

Ours is a nation of small business; 96 percent of all businesses are small. Small businesses account for 43 percent of the gross national product and two-thirds of all new jobs. It is the incubator for new ideas, creative technologies, and broadened economic opportunities.

There is little doubt that crime has become one of the biggest threats to small business. In 1980, there were more than 533,000 robberies nationally, as reported in the uniform crime reports compiled by the U.S. Department of Justice. Of these robbery victims, more than 130,000 were businesses whose estimated total loss exceeded $100 million. And on top of these robberies, over 1,197,000 nonresident burglaries were also reported in 1980, costing another $858 million in estimated losses. That adds up to a staggering total of nearly $1 billion lost by business to robbers and burglars.

Despite the assurance in the preamble to the Constitution that one of the first purposes of our Government is to insure domestic tranquillity, we are not blessed with peace.

Violence, and the fear of violence, grips our society. According to the Federal Bureau of Investigation, every, 23 minutes someone in the United States is murdered. Every 6 minutes a woman is raped. There is a robbery every 58 seconds, and a burglary takes place every 8 seconds. Just by the time this hearing is over, 12 more people will lie dead in their homes, in their businesses, or will be cut down on our streets, perhaps for only a few dollars.

They are victims of the thugs who have made a business of crime, and who have made crime pay for themselves, at a terrible cost to law-abiding citizens.

Crime pays for these violent lawbreakers because less than one-half of them will ever be caught. Fewer than 5 in 100 will be convicted, and fewer than 1 in 100 will ever be sent to prison. These are pretty favorable odds for someone looking to make an easy living at the expense of society.

The figures here in New York State speak for themselves. In 1981, out of 9,905 individuals committed to State prisons, 87 percent had a previous arrest, 60 percent had been previously incarcerated, 61 percent were violent felony offenders, and 38 percent were second felony offenders.

Our State prisons are filled with hardcore career criminals, yet fully 83.8 percent of them will serve 5 years or less in prison, and 67.1 percent—more than two-thirds—will serve only 2½ years for their crimes.

The average time served by a murderer in New York is less than 7 years. The average time served for someone who has been convicted in our State for the crime of rape is less than 4 years. I think that is intolerable; and for those imprisoned for robbery—almost half of the new prisoners committed in 1981—the average time served in prison will be 2 years and 4 months.

But it is not enough to simply recite the horrifying statistics of crime. We must also realize that behind these numbers are victims whose lives were profoundly affected, and often shattered, by their personal encounter with crime. Our first witnesses today are good, decent, law-abiding citizens who were all victims of violent crime. I know it is difficult for them to recount their stories, but I believe theirs is the very testimony we need to put the terrible problem of crime in proper focus.

There is a growing awareness in America that the very fabric of our society is being torn apart by a crime wave that knows no bounds. It can hit any one of us at any time. The U.S. Congress has responded with passage of the Omnibus Victims Protection Act of 1982, to encourage greater consideration of the rights of victims of crime in Federal cases, and the U.S. Senate has passed the Violent

Crime and Drug Enforcement Improvements Act of 1982, which now awaits action in the House of Representatives. Among other changes, this bill contains much-needed improvements in our Federal laws governing bail. It would allow those charged with a Federal crime to be held for trial without bail where it is determined that their release would endanger society.

In this way, criminals with a history of violent offenses could be kept off our streets. Similar legislation has been introduced in the New York Legislature, and I am hopeful that it will be enacted into law here.

Such preventive detention measures have been suggested by two new studies prepared for the Department of Justice by the well-respected Rand Corp., as a means of dealing with the omnifelons who comprise the career criminal element responsible for the majority of all violent crimes.

President Reagan's recent announcement that the administration will step up its battle against organized crime and drug trafficking is also welcome news. The President recognizes that additional resources will be needed to successfully combat crime, including new prisons to hold the additional criminals this nationwide dragnet will snare.

Here in New York our own prisons are filled to the breaking point. If we are to see to it that those convicted of violent crimes are given the sentences they deserve, we must acknowledge the need to build new prisons in New York. I believe Washington has an important role to play in assisting States to build needed prisons.

In the 1970's the Law Enforcement Assistance Administration channeled hundreds of millions of dollars to States and localities to assist in their battle against crime. Now the Federal Government must not shirk from its responsibility to help build the prisons necessary to separate the violent criminals among us from the rest of society.

While the primary duty for the administration of criminal justice rests with State and local governments, all levels of government have a duty to deal with the crime menace. Crime is not somebody else's problem; it's everybody's problem. It should be attacked from the local courthouse to the State house to the Houses of Congress.

We must undertake this concerted national effort because domestic tranquillity means more than freedom from foreign invasion or domestic insurrection. It means safety in our communities and security for our businesses.

In a word, it means peace for a society where the rule of law has been subverted by violent thugs and where freedom from fear is slipping further away from all of us.

And now I look forward to listening to and learning from the witnesses who have given of their time to be with us today, witnesses who are people who suffered indignities, from those who are in the area of law enforcement, and the District Attorneys Association. We want to hear from them as to what they believe we can best do to insure that people in our society are free.

I want to thank State Senator Ralph Marino and his staff for joining in what I think is a necessary joint effort of local government, State government, and Federal Government to see what we can do and hopefully develop meaningful legislation to deal with this horrible menace we now face and with which our citizens are forced to live.

STATEMENT OF HON. RALPH MARINO, STATE SENATOR FROM THE STATE OF NEW YORK

Mr. **Marino**. Thank you, Senator D'Amato. I want to commend you for coming to Albany for the second in a series of hearings to put a spotlight on a very important issue before all the people today, the effect of crime on small business and its effect on the lives and property of our citizens.

As you have specifically pointed to the problem of street crime, it is a problem which needs urgent solution. New York State has been grapling with this problem a number of years, and I am hopeful that these hearings today will offer us some solutions to that problem—a problem of balancing the constitutional rights of a person charged with a crime versus the responsibility of government to safeguard the citizens. That is what this hearing basically is all about.

I want to thank you for your approach to the problem of prison capacity and in suggesting that the Federal Government has a role to play in this problem.

As you know, last year I passed legislation calling for a bond issue in New York State, which was unsuccessful by 2,000 votes.

If we are incapable of passing legislation you suggest at both the Federal and State levels, we will have an even greater problem in prison capacity. That is a subject on which I would like to hear testimony today. I am hopeful that Washington will take cognizance of our very real problem in prison capacity, so that we retain people who can help us solve these problems.

With that, I again want to compliment you on bringing together a list of experts and professionals in this area who can help us in dealing with this problem.

Thank you for being here today. I am sure it will be a fruitful hearing.

Senator **D'Amato**. Thank you, Senator.

For the record, I want to show we understand that the Attorney General is deeply committed to the program of State and Federal Governments working together. The Deputy Associate Attorney General, Jeffrey Harris, is here. These hearings will not be confined just to New York. There will be additional hearings held throughout the country. We are looking to develop programs and plans to help deal with these problems.

I might note that I want to commend the district attorney, Sol Greenberg, of Albany County, and his staff for helping us in this effort to bring forth to the public, particularly as it relates to crime victims, the first panel. All too often we hear the experts talk—criminologists, district attorneys, and sheriffs, et cetera—telling us why things cannot take place. I think it is important to be focusing on the victims of crime.

I might note that one of the assistants will introduce a little profile on victims and also families of victims.

Of the five victims, all five of the defendants had previous convictions and were out on parole.

These witnesses were not selected on that basis. We did not look for people who were victimized by people out on parole. These are the facts.

I think underlying that there is something that should be noted, a situation where we looked for victims of crime and, indeed, five of the victims are people who have been victimized by people who were released prior to the completion of their full sentences. Whatever the reason, I think we have a responsibility to examine why and how it is that we have this situation taking place, not only in this area but in too many areas throughout our Nation. This is not just in New York State, not just in great metropolitan New York, but in too many of our urban areas throughout this Nation.

I think this speaks to the point Senator Marino raised, that is, we must see that there is maximum utilization of existing prison facilities for violent criminals, see that there are sufficient steps taken so that violent criminals and repeat offenders particularly are kept off the streets.

I now ask our first panel to come forward and our district attorney, Sol Greenberg.

STATEMENT OF SOL GREENBERG, PRESIDENT, NEW YORK STATE DISTRICT ATTORNEYS ASSOCIATION, ALBANY, N.Y.

Mr. **GREENBERG.** Senators and the rest of the panel, in the interest of time I would like to introduce Mr. Christopher Rutnik, assistant district attorney in the Albany County District Attorney's Office, who is in charge of the career criminal program, now known as the major offense prosecution program, in our office, which originally was federally funded and now is funded by the State of New York, which concentrates on violent felony crimes. He has prosecuted most of these cases or he personally knows a great deal about these cases which he did not prosecute. He will give you a profile respecting each of these witnesses who appear before this body.

Thank you very much.

Senator **D'AMATO.** Thank you very much.

STATEMENT OF CHRISTOPHER P. RUTNIK, ASSISTANT DISTRICT ATTORNEY, ALBANY COUNTY DISTRICT ATTORNEY'S OFFICE

Mr. **RUTNIK.** Senators, my name is Christopher Rutnik. I am an assistant district attorney in the office of Sol Greenberg, Albany County District Attorney.

At the outset, Senators, I wish to thank you for taking time out of what I know to be a very busy schedule to look into this problem which has plagued our streets and plagued our society for a long time.

I am sure that the statements of these victims will be productive in producing a remedy, if not a cure, for this cancer that has crept into our society, the cancer being the commission of violent crime by defendants who have been incarcerated for similar or other violent crimes.

I also am very gratified, Senators, that you are giving an opportunity for the victims of these crimes to be heard. All these victims have gone through the ordeal of a trial with vigorous, sometimes blistering, cross-examination by defense attorneys during the course of the trial. When the trial is over, they stand there, almost inevitably, in silence. Their rights are not heard, Senators.

I congratuate the panel for bringing forth this need and listening to these victims.

I will also point out, Senator, that each of these victims who will speak before you has received sentences from the defendants who caused these crimes far in excess of the sentences that were imposed upon the defendants who committed the crime.

Most of these victims who will speak before you have injuries which they will bear for the rest of their lives far beyond the permanent maximum sentence given to most of these defendants.

Without further ado, Senator, I would like to introduce Norine Golembieski. Norine Golembieski is married. She is approximately 35 years old. She is the mother of four children.

On October 31, 1980, she was coming home from kindergarten with her 5-year-old daughter and her 2½-year-old daughter in hand. As she walked up the steps to her home in Albany the defendant, Douglas Hoke, grabbed at her purse and dragged her and her 2½-year-old daugher down a flight of eight concrete steps. Mrs. Golembieski is permanently disabled in her left ankle. She still takes medicine on a daily basis for that pain.

With respect to the defendant, Defendant Douglas Hoke was out on parole approximately 2½ months. The previous conviction for which he was on parole involved an attempted robbery of a 62-year-old woman wherein he dragged the woman down a flight of stairs and seriously injured her.

The conviction was March 20, 1978. The commission of this crime was October 31, 1980. He had been out less than 2 years.

While this defendant was out and subsequent to the testimony you will hear from Mrs. Golembieski, within 12 hours of this crime the defendant raped and sodomized an 11-year-old boy, and 3 days after that he was involved in the rape and sodomy of a 13-year-old girl.

I am happy to say, Senator, that as a result of the robbery of Mrs. Golembieski, he has been convicted and now is serving a 7½- to 15-year maximum sentence prescribed by law.

With respect to one of the other incidents, he was subsequently convicted and also is serving a consecutive 7½- to 15-year sentence. However, I remind the Senators that on the third incident there was a hung jury, a retrial was ordered, and the defendant, with respect to that incident, is still cloaked with the presumption of innocence.

I now turn you over for any questions with respect to how this incident affected the life of this woman, her family, and how she feels about it today.

Norine Golembieski.

Senator D'Amato. Mrs. Golembieski, on behalf of the panel, thank you for having the courage to come forward and let the public hear a firsthand account of what has taken place and how it has affected your life. We thank you.

STATEMENT OF NORINE GOLEMBIESKI, ALBANY, N.Y.

Mrs. GOLEMBIESKI. On October 31, 1980, I was coming home from school with my two children and a friend of my daughter. When I reached the house I started up the stairs. When I got to the landing this man came from behind me and started tugging at my pocketbook.

After several minutes of struggling and screaming, he took my balance and proceeded to drag me down eight concrete steps. I had my 2½-year-old daughter by the hand. I did not let go of her because I was fearful that something would happen to her.

When we reached the bottom of the stairs I finally let go of her and he continued to drag me to the street. With that, a man had stopped a truck and come to my aid.

This has affected my life greatly because after it happened I would wake up nights dreaming about it. I can feel him tugging on my pocketbook. My children have had similar nightmares. It has affected my life greatly and that of my family.

I have a hard time walking. I have lost the lateral motion in my foot which I will never get back. Mostly this is damage which has been done to my family.

Senator D'AMATO. You have a constant fear?

Mrs. GOLEMBIESKI. I do. I have a constant fear when I get out in the street. If someone is behind me, I have that fear of their coming from behind me and injuring me again.

Senator D'AMATO. You have these feelings about which you testified?

Mrs. GOLEMBIESKI. Yes, I do, Senator. That really drained me emotionally. I was afraid that he would not be convicted and he would be able to go out on the street again and commit a similar crime and maybe hurt an older person whom it would affect greatly.

Senator D'AMATO. Did he indicate during the struggle anything to you? Did he shout at you?

Mrs. GOLEMBIESKI. No, he didn't, Senator. He just was trying to get the pocketbook.

Senator D'AMATO. There was a 2½-year-old and another child with you?

Mrs. GOLEMBIESKI. Yes; my 5-year-old daughter and her girlfriend.

Senator D'AMATO. What kind of effect did it have on her? It must have been traumatic.

Mrs. GOLEMBIESKI. Oh, yes, it was traumatic. She had to testify before the trial. She still talks about it all the time. It has affected her greatly.

Senator D'AMATO. Mrs. Golembieski, let me thank you again for taking the time to come here and tell us how traumatic even what we today consider to be a somewhat minor offense can be. It is almost a minor offense, you know, when you knock people down. When they come out alive, we say they were lucky. It is incredible. Yet, how this has affected your life and your family's life is traumatic. At least there was someone there who took the time to help you.

At some of these hearings we find people are beaten, shot, and mugged, and Mr. and Mrs. Citizen turn their backs and do not become involved.

Senator Marino, do you have any questions?

Mr. MARINO. I merely want to ask what kind of help you got from the State and Federal agencies with regard to your injury. Did you get any award?

Mrs. GOLEMBIESKI. Yes.

Mr. MARINO. Was it enough to cover your medical expenses?

Mrs. GOLEMBIESKI. No, it wasn't.

Mr. MARINO. Do you have any other insurance coverage?

Mrs. GOLEMBIESKI. Yes, I did.

Mr. MARINO. Has it affected you financially in terms of your having to lay out your own personal moneys for your injury?

Mrs. GOLEMBIESKI. I did, and I still have to wear a special shoe. I always have to wear a special shoe because of the damage done to the foot.

Mr. MARINO. Your family is in no financial position to help you?

Mrs. GOLEMBIESKI. That is right.

Senator D'AMATO. Thank you very much.

STATEMENT OF CHRISTOPHER P. RUTNIK, ASSISTANT DISTRICT ATTORNEY, ALBANY COUNTY DISTRICT ATTORNEY'S OFFICE—Continued

Mr. RUTNIK. Senator, Amelio Ditale is the owner of a tailor shop in Albany. On September 22, 1979, the defendant, Alexander Gibson, who was on parole, along with another, entered the store and briefly in the course of the robbery Mr. Ditale suffered 10 to 15 blows across the forehead and other parts of the body with a brick.

Mr. MARINO. A question occurs to me. One of the last cases we had, this fellow was on parole for 2½ months?

Mr. RUTNIK. That is correct.

Mr. MARINO. How is it that he was permitted, after this attack, to commit another attack?

Mr. RUTNIK. He was not arrested until the two other incidents occurred. He was arrested after the two other incidents which I described occurred.

Mr. MARINO. You didn't know about this prior to that?

Mr. RUTNIK. He knew about the occurrence but we did not have an arrest yet.

Mr. MARINO. But you knew who it was?

Mr. RUTNIK. The victim had not made an identification of the suspect until he was arrested on the other incidents.

Mr. MARINO. I am sorry to have interrupted.

Mr. RUTNIK. As I was saying, Amelio Ditale is a 55-year-old man who runs a tailor shop. The defendant, Alexander Gibson, along with another, entered the shop. There were 10 to 15 blows across the head and other parts of the body.

During the course of this robbery Mr. Ditale, who was a former policeman in Italy, knew he was being robbed, but there came a point in time when he said to himself, "This is no longer a robbery. These guys are going to kill me." At that time Mr. Ditale reached for a pair of scissors and defended himself.

Mr. Ditale, in the grand jury testimony, was asked to indicate where on the head he was hit with the brick, and he couldn't lift his right arm, from the bruises, to point to his head where he had been injured.

The defendant in this particular case had previously been convicted of a felony. He committed this felony on September 22, 1979. One day later the same defendant committed another violent robbery in the city of Albany. He stands convicted on both. I am happy to say that he has received a sentence according to law, the maximum sentence precribed by law, 7½ to 15 years.

Mr. Ditale suffered 70 to 100 stitches as a result of this injury.

Senator D'AMATO. He was out on parole also?

Mr. RUTNIK. He had previously been convicted of a felony. I am not exactly sure whether he had served all his parole or not.

I should point out to the Senators that I am referring to the previous felony convictions of the defendants. Most of them have other arrests and criminal records other than felony convictions for violent crime.

I will turn now to Mr. Ditale.

Senator D'AMATO. How do you do, Mr. Ditale. Thank you very much for coming and giving us the benefit of your experience.

STATEMENT OF AMELIO DITALE, ALBANY, N.Y.

Mr. DITALE. That is my story.

Senator D'AMATO. Maybe you would like to tell your story in your own words, what happened and what it has done to you.

Mr. DITALE. Yes.

On December 22, 1979, on a Saturday in the morning, usually I work in my tailor shop. It was around 10 o'clock that two black guys came inside the store and they asked me about some kind of work. They wanted to put a zipper on a jacket. They asked me about the price.

I told them about the price. They said, "We are going to go out and shop around to see if we can get it any cheaper. If we don't find it any cheaper, we will come back to you and let you do the work."

They went out, and after about 10 minutes they came inside and they started talking. They came around my counter. They said, "We will let you do the work." I just got up from my chair and I reached under the bench and started to write their ticket.

As soon as I turned around one of the guys jumped on me and twisted my arm. The other guy put my head on the floor and started to hit me in the head.

He hit me so many times, and I realized that these guys were not robbers. They would just knock me out and do whatever they wanted in the store and whatever.

I have just a little bit of strength left. I got up and I know on my bench I have a big scissor. I went over there and grabbed the scissors and I run after them.

After that I tried to call for help because I had lost so much blood, I could see nothing, and I was afraid I would pass out.

That is the whole story.

Senator D'AMATO. Mr. Ditale, you were fighting for your life.

Mr. DITALE. That is right; that is correct.

Senator D'AMATO. Senator Marino.

Mr. MARINO. I have no questions.

Senator D'AMATO. Let me say that we certainly share with you the anguish you went through. We are thankful you survived.

About 2 weeks ago a businessman came to me who said to me, "Senator, we are pouring money in and attempting to redevelop this area. The greatest problem we face today in our society is the violence, the absolute savagery that is taking place."

He related to me how outraged he was. He told me of a robbery that had taken place where two young men who worked for him were tied, bound, and then executed, both of them shot in the head. One man was 22 and the other 25.

The man was just distraught about this. He knew I was coming here and it was just to give me this thought—"My God, we have to do something to give people protection and peace of mind to which they are entitled."

I thank you for sharing with us what all too often has taken place in too many of our communities.

Maybe if people in the Congress of the United States can be convinced we cannot look to any one person or any one jurisdiction, we can define the manner in which we can deal constructively with the problem so that the Amelio Ditales of this world can run their shops or women can take their children to school or their places of business and live in their homes without terrorism.

Thank you for coming.

STATEMENT OF CHRISTOPHER P. RUTNIK, ASSISTANT DISTRICT ATTORNEY, ALBANY COUNTY DISTRICT ATTORNEY'S OFFICE—Continued

Mr. RUTNIK. Senators, the next victim I would like to present will give a different viewpoint on how violent crime not only affects the victims but affects other people and overflows into the courtroom as well.

The defendant, William Sasso, was arrested as a result of 2 years of intensive investigation by the Federal Bureau of Investigation, the Connecticut State Police, the Federal Probation Department, and the New York State Police.

Our next victim had the unfortunate opportunity to be a bank teller in her line of work at the savings bank in Guilderland, just outside the city of Albany.

The defendant, William Sasso, along with another individual by the name of LeMar Stinson, had robbed this bank. Sasso jumped across the counter of the bank and placed a loaded 38 caliber handgun to the temple of this next victim. Twice during the trial this victim had broken down in trying to recall the facts and circumstances surrounding this particular robbery.

With respect to the defendant, William Sasso, he was convicted of a felony in 1960. In 1967 he had been convicted of a burglary-type felony with violence. In 1969 he had been convicted of armed bank robbery in the Federal District Court for this district.

He was paroled approximately 1974 on a 22-year sentence and he was on parole until the commission of this particular crime.

The other defendant, Stinson, had also been convicted of two previous felonies, one of them a robbery.

During the course of this trial there had been a threat on the lives of the jury. The jury had to be sequestered and protected. It was the most intensive security in the history of Albany County court. Throughout the entire trial it was necessary for armed members of the Bureau of Criminal Investigation to be present directly behind the judge with loaded automatic weapons and attack dogs.

During the course of this trial there were no fewer than 14 or 15 armed investigators in the courtroom at all times for fear of reprisals with respect to this prosecution.

I now present to you, Senator, Pamala Cooke.

Senator D'AMATO. Good morning. Thank you for coming in.

STATEMENT OF PAMALA COOKE, EAST GREENBUSH, N.Y.

Ms. COOKE. In October 1980 I was employed for Home Savings Bank at that time as an assistant manager of a branch in Guilderland.

About 5 minutes before we closed in the evening these two gentlemen entered our bank. They had masks on.

Senator D'AMATO. It is needless to say that this has left you with a traumatic impact.

Ms. COOKE. Yes; it has.

[Witness is crying.]

Senator D'AMATO. You do not have to go any further. The assistant district attorney indicated this was an armed robbery. Obviously, it has had a deep effect on you. I think your coming here indicates to the people here the traumatic effect it has had on you several years later, and that this is something that lasts with our people.

Ms. COOKE. It was a very frightening experience, something I would never want to go through again.

Senator D'AMATO. Senator Marino mentioned before that the State has set up a victim's compensation board. Have they been helpful in meeting some of your medical costs?

Ms. COOKE. Yes. There was no problem.

Senator D'AMATO. Do you still work for the bank?

Ms. COOKE. Yes; I am still there.

Senator D'AMATO. You do not serve strangers anymore?

Ms. COOKE. No. I have transferred to another branch.

Mr. MARINO. Are you doing different work?

Ms. COOKE. Yes.

Mr. MARINO. Do you live with your family?

Ms. COOKE. Yes.

Mr. MARINO. Has your relationship with your family changed as a consequence of this?

Ms. COOKE. Somewhat. At that time my husband was traveling and he still travels during the weekends. I don't like to be alone.

Senator D'AMATO. I think by what you do not say we have a very clear understanding, at least some understanding, of the traumatic impact this crime has had on you personally and on your famly, as it has on so many others. I sincerely thank you because I know this has been a traumatic experience and it has taken considerable courage for you to come here and let the public hear about your case.

Ms. COOKE. Thank you.

STATEMENT OF CHRISTOPHER P. RUTNIK, ASSISTANT DISTRICT ATTORNEY, ALBANY COUNTY DISTRICT ATTORNEY'S OFFICE—Continued

Mr. RUTNIK. I have just one additional comment, Senator, with regard to William Sasso. Because of the statute in the State of New York as a persistent felony offender, he was sentenced to the maximum sentence prescribed by law, 25 years to life. That is the maximum sentence you can give for any crime. That was because of the previous felony convictions.

Senator D'AMATO. So we know he is convicted for at least 25 years.

Mr. RUTNIK. That is my understanding of present law, yes. That is correct.

Senator D'AMATO. That is Senator Marino's bill.

Mr. RUTNIK. Senator, the next victim, Gary Geiger, is a motel clerk, a night auditor at a motel here in Albany.

On August 13, 1981, four defendants came inside the motel. They forced him to the ground, held a loaded handgun to his head and threatened to kill him if he didn't tell them where the money was. Gary Geiger complied completely with their demands and told them where the money was.

He laid on the floor, and not hearing anything for a few moments of silence, he had thought the perpetrators had gone. He stood up defenseless, unarmed. One of the perpetrators ripped a bullet into his stomach. That bullet, Senator, is still in his stomach here today as a somber reminder of his terrible experience.

The defendant, Wayne Blanchard, on November 14, 1979, had been paroled from a robbery conviction in Syracuse, Onondaga County, wherein the defendant had beaten unconscious a person delivering a pizza to a resident in the Syracuse area. He was on parole at the time of this incident.

The other defendant who was apprehended and convicted was Goldie Jackson. He was on parole from the State of Pennsylvania on June 12, 1981. This crime occurred August 13, 1981, 2 months later.

He had received a sentence in Pennsylvania of 4 months to 5 years. The minimum was 4 months. That sentence was imposed February 6, 1981. He was released June 12, 1981, barely over the 4-month minimum.

Senators, I present to you at this time Gary Geiger.

Senator D'AMATO. Thank you for appearing, Mr. Geiger.

STATEMENT OF GARY GEIGER, SCHENECTADY, N.Y.

Mr. GEIGER. Thank you, Senator.

In August 1981, I was employed as a night auditor at the Best Western here in Albany. If I may say so, Senator, I believe I met you on one or two occasions when you stayed there.

Senator D'AMATO. Where was that?

Mr. GEIGER. At the Best Western on Broadway. We met a couple times.

It was a very dangerous area. We had very little or no security whatsoever. I had had other trouble there, so I wasn't surprised by the incident. The night was particularly slow. It was a very warm night.

Four black males entered the lobby area about 3 o'clock that morning. I had just taken a break. Two of them went to my side of the desk. Two stood at the desk and one came around toward the back. He came around to my rear and immediately I saw a handgun and was told it was stickup.

I used to be a banker and I was trained in how to react if there was ever a robbery, so I think in that situation I handled it pretty well. I tried to remain as calm as possible. I said very little. I spoke only when I was asked a question. I was hit a couple times with a fist on the side of my face and with a gun butt at the right side of my temple.

I was pushed into the back room. One of the things that still appalls me is the lack of security at the motel and the fact that things were left open. The safe was not open but you could see there was a safe there instead of the door being locked.

They saw this and apparently got excited and asked me for the money or the combination to the safe, which of course I didn't have.

One of them told the other gentleman to knock me out. He hit me on the back of the head with the handgun. I was on the floor and pretended I was hurt, which I really wasn't.

Because of the carpeting and sneakers they wore, I couldn't hear them. I was scared, jumped up, and heard a shot. I was shot in the back and the bullet traveled down into my abdomen area where it is today.

The traumatic thing was not so much getting shot but going through the trial and cross examination for 2 hours, asked if I had been on drugs, if I was an alcoholic. This left an impression with me, plus I got a firsthand look at our judicial system. I am still very appalled at our parole system, that these gentlemen were out on parole.

I think I have been able to take this incident a little better than perhaps some other people because of the fact I have been an amateur athlete for the past 10 years in three different sports, so I learned the ups and downs of life.

At the beginning it was tough for me because I was out of work and I kept thinking that the bullet was going to move. I have been assured it never will.

As far as the lasting impression, I don't particularly hang around in crowds. I am a little leery of crowds. When I am walking down the street, I look over my shoulder.

I think it gave me a firsthand look at our judicial system. There needs to be change.

Senator D'AMATO. Gary, do you still do that same kind of work?

Mr. GEIGER. No. I am a bookkeeper now. I will never work nights again.

Senator D'AMATO. You will never work nights again?

Mr. GEIGER. Never.

Senator D'AMATO. It has had a profound effect?

Mr. GEIGER. Yes. I was asked to come back even with a security guard. Not just for myself but for my family, I couldn't do it. I was there 3½ years. There had been other incidents, so it was not a complete surprise to me, but I think his firing the pistol was the surprise.

I tried to rationalize why he pulled the trigger when I was unarmed and completely complied. I came to the conclusion that I think he was more scared than I was.

Senator D'AMATO. You talked about the need for reform in the judicial system and you were appalled. In capsule form, what appalled you most? Here you were a victim. Here you were shot for no reason other than the fact you happened to be there and you were the night manager on duty at the motel.

What appalled you most about the judicial system?

Mr. GEIGER. I think what appalled me most is the fact that when these men are let out on parole, where are they going? No one will give them a job. They will be out on the streets. These were young men, 20 and 21 years old. We all have to eat. We have to provide for ourselves. They had nowhere to go and, from what I can gather, they were out for a quick buck, beer money, and this is what will happen.

I think we have to take another look at this parole system, perhaps more funding into bigger prison systems so we can rehabilitate. If we are not going to rehabilitate, this is what will happen. They will have too much time on their hands and—I guess in the olden days what happened was if they robbed you, they wanted just the money. Now they want to hurt you.

Senator D'AMATO. Repeatedly, the story we hear is that it is more than just a robbery. There is almost a thrill connected with the beating of an elderly man, for example, who offers no resistance and whose money they had. I mentioned the shooting of the two young men. The employees were just shot. They were tied, gagged, and shot.

I thank you very much for coming.

Mr. GEIGER. Thank you.

STATEMENT OF CHRISTOPHER P. RUTNIK, ASSISTANT DISTRICT ATTORNEY, ALBANY COUNTY DISTRICT ATTORNEY'S OFFICE—Continued

Mr. RUTNIK. Senators, Erin Reilly is a 24-year-old medical technician from Albany Medical Center Hospital. What she did on June 3, about 1 minute after midnight, was return from a softball game with her girlfriends to go to her apartment and walk from her car about 20 yards to the front door where she lived.

At that time the defendant came up from behind her, grabbed her around the neck, and dragged her to the middle of the street.

She pleaded with him to let her go. She screamed. He wouldn't let her go. He just said, "Shut up or I'll kill you."

She continued to plead with him and scream, but it fell on deaf ears. It was a cold night and no one heard her.

The defendant then drew a razor-type instrument across her neck, the side of her face, digging into her jawbond, puncturing her skin into her mouth.

The defendant just one-half hour earlier had slashed the throat of another girl.

Erin Reilly, Senators, for the rest of her life will have this scar across her face as a remembrance of that night.

The defendant, after very lengthy jury deliberation, was found guilty of assault in the first degree and was given the maximum sentence prescribed by law for both incidents, 7⅓ to 22 years.

I respectfully submit, Senators, that the sentence this girl has to suffer for merely exercising her right to walk from her car to her house sadly outweighs the sentence that our courts are allowed to impose upon this defendant.

The defendant in this particular case had been previously convicted of robbery in the second degree involving the beating of a 15-year-old girl behind a high school along with another. The girl was dragged, kicked, punched, and her radio was stolen.

Because of the defendant's age, he was given the full benefit of the doubt. Youthful offender treatment was imposed under the laws of the State of New York, which removes the stigma of a felony conviction.

The defendant was released on parole on March 2, 1981. Because of the imposition of the youthful offender's status of the previous conviction, the sentence was 7⅓ years to 22 years. Had it been a previous conviction, the minimum sentence would have been one-half the maximum.

I present to you Erin Reilly.

Excuse me. Senators, I don't mean to sensationalize this——

Senator D'Amato. I saw the pictures. Don't show them.

Mr. Rutnik. Thank you, Senator.

Erin Reilly.

Senator D'Amato. Erin, thank you very much for appearing.

STATEMENT OF ERIN REILLY, MECHANICVILLE, N.Y.

Ms. Reilly. You are welcome.

As mentioned, I was returning from a softball game, and I got out of my car and was going toward the house. The person walking down the street asked me where a street was. I did get a real eery feeling when I originally saw him so I didn't stop to talk to him. I just told him it was a few streets up and kept walking.

He grabbed me from behind and took me to the street. I was screaming. He told me if I didn't shut up he was going to kill me, and he cut my neck.

Mr. Marino. Was this a rape? Did he try to rob you?

Ms. Reilly. No. He never asked for money. I had my softball uniform on. I didn't have a purse with me.

Mr. Marino. He just wanted to commit violence?

Ms. Reilly. Apparently.

Senator D'Amato. You begged him to let you go?

Ms. Reilly. We struggled first, yes. He told me to shut up twice. The second time he said, "or I'll kill you."

Senator D'AMATO. Obviously, this has had a profound effect upon you.

Ms. REILLY. It has had a great effect upon me, yes. I am very jumpy. I am always looking over my shoulder. I still have occasional pain.

Senator D'AMATO. How long were you under recovery from this crime? I saw the pictures. I don't want to see them again. How long have you been under recovery?

Ms. REILLY. I lost 3 weeks of work. I am still seeing a doctor. I have to start wearing something around my neck just to try to flatten out the scars.

I would like to mention the crime victim's compensation. I have not received anything from that. I was told that they don't compensate for lost work due to the trial.

Senator D'AMATO. They do not compensate for lost work due to the trial, so that in order for you—you took off how much time?

Ms. REILLY. I took a week off.

Senator D'AMATO. So not only were you victimized, but then you had to pay or suffer the loss of earnings. There was no compensation for the time you were testifying in court?

Ms. REILLY. That is right. As of now I have received nothing.

Senator D'AMATO. As of now you have not received anything?

Ms. REILLY. That is right. They did tell me last week that for legal services they do not compensate.

Senator D'AMATO. They do not compensate for legal services?

Ms. REILLY. That is right.

Senator D'AMATO. And they don't compensate for loss of earnings due to your appearing in court?

Ms. REILLY. That is right.

Senator D'AMATO. Did you receive anything for your loss of earnings as a result of you being incapacitated?

Ms. REILLY. Not yet.

Senator D'AMATO. When did this take place?

Ms. REILLY. June 2, the night of June 2 and 3.

Senator D'AMATO. This year?

Ms. REILLY. Right.

Senator D'AMATO. Senator Marino.

Mr. MARINO. Will plastic surgery be covered if you require it?

Ms. REILLY. I am seeing a plastic surgeon. I am hoping that will be covered.

Senator D'AMATO. You are not sure whether or not it will be covered?

Ms. REILLY. By my own insurance?

Senator D'AMATO. No, by the State.

Ms. REILLY. I don't know.

Mr. MARINO. Have you ever inquired about that?

Ms. REILLY. No.

Senator D'AMATO. Perhaps Senator Marino can be of assistance.

Mr. MARINO. Yes.

Senator D'AMATO. Obviously, it would seem to me if we want to encourage witnesses to come forward, people who have suffered abuses, that crime victims' compensation certainly should pay them for the time they lose to come in and testify.

If you want to encourage witnesses to carry out their responsibilities, it would seem to me, particularly when they take the time and have been traumatized and victimized in this way, it would be only proper to take care of this problem. Your testimony has been helpful to some extent to Senator Marino who is a leader in this area.

It is too bad some of these approaches have not been adopted because maybe some of you would not have been victimized. Maybe it would not have happened.

Erin, you have made a very valuable contribution. I thank you for your courage in appearing here today.

Ms. **Reilly**. Thank you.

STATEMENT OF CHRISTOPHER P. RUTNIK, ASSISTANT DISTRICT ATTORNEY, ALBANY COUNTY DISTRICT ATTORNEY'S OFFICE—Continued

Mr. **Rutnik**. Senators, the final victim I present to the board, I do not have the background on the defendant who was not prosecuted in Albany County. I did not handle the case. The victim is not one who directly experienced a crime but he is the father of the girl who was brutally raped and murdered while a student at one of our State universities in Oneonta, the Rev. Howard Velzy.

Reverend Velzy is here to describe to you how this crime has affected him, affected his life, affected the life of his family.

I will note with respect to this that the highest court in the State of New York has just reversed the conviction of this defendant and ordered a new trial because certain evidence that was obtained was found to be obtained in deprivation of the defendant's constitutional rights.

I now present to you Reverend Velzy.

Senator **D'Amato**. Reverend, let me thank you on behalf of the many people who have the courage to be here. As the district attorney indicated, although you did not suffer from an actual crime on your person, probably there is suffering you and your family have gone through. I cannot imagine anything worse than having to endure the pain during the time which your daughter was missing, and then the actual incarceration, the trial, the conviction, and now recently a reversal of that conviction.

It would appear to be a decision which works against the interests of justice and deals rather in minutia as opposed to the substance of justice, protecting the rights of people, understanding they are the rights of our civilization. There should be a balance and an equity. I know that people throughout the Nation are shocked. I cannot possibly understand the pain you are going through, but I thank you before you make your presentation for being here.

STATEMENT OF REV. HOWARD VELZY, GREENFIELD, N.Y.

Reverend **Velzy**. Thank you, Senator.

I prepared a statement inasmuch as our case has been lengthy and elaborate and somewhat complicated. Having now lived with this situation for 5 years constantly on our minds, I have drawn at least not some conclusions but some questions which continually probe me and probe the people with whom I come in contact. If I may beg your indulgence, there are copies of this statement.

In the fall of 1977, our daughter, Linda Jill Velzy, went off to college. She chose to attend her mother's alma mater, SUNY at Oneonta. Linda was a girl who loved life and people. College, for her, became an exciting adventure. When asked what she wanted to do with her life, she wrote:

> My main goal in life is to help people. I love people and when I help someone, it makes me feel good. I want to help all people though—not just a few. That's very idealistic but it is possible.

Ironically, she also wrote:

> Kids should be taught to try to understand others. Then maybe people would learn to love each other and society would be better. Or do we have to change our government in order to right our society?

On December 9, 1977, Linda went downtown Oneonta to buy a Christmas present for her mother. On her way home she stopped by to check an apartment and then headed back to campus for dinner and an evening with her boyfriend. It was snowing and cold as she headed back uphill the 1 mile to campus.

In the meantime, Ricky Knapp had gotten off work. It was his custom to stop by a bar and have a few beers. He had bragged to his friends how he liked to go out looking to pick up girls. If he could not find a pickup, he had been known to grab a girl and rape her. As a matter of fact, at this time, Ricky Knapp was out on bail, after two other criminal convictions, for hiding in the bushes and grabbing and raping another Oneonta coed the previous September. He headed from the bar toward the college, presumably looking for his next victim.

What happened between Linda and Ricky in the next few hours only Ricky Knapp knows, and our courts do not want to hear his confession and, of course, Ricky has made certain that Linda cannot tell us.

As parents, we were notified 24 hours later that our daughter had disappeared. When we arrived at Oneonta, we were informed by two different law enforcement agencies and campus security that we should not worry—that she had undoubtedly run away and would return on Monday. We were told that there had been no crime and, therefore, there could be no formal investigation, but information regarding her disappearance would be put upon the teletype and circulated as a missing person.

That most elementary investigation would have indicated that Linda had neither run away or had left the area voluntarily and that foul play was indicated. Through significant personal pressure, I had to force law enforcement to handle the investigation in a more significant manner than simply a missing person case. After I pressured the law enforcement agencies of both the State and Oneonta, and offered a personal reward, and agonized with the police during a 3-week investigation, we had no idea of whether our daughter was alive, kidnaped, being held hostage, or dead.

On New Year's Day, the police, having been tipped ahead of time by an informant, arrested Ricky Knapp as he was dragging Linda's frozen body through the woods to a 4-foot grave which he had dug and in which he was going to throw her body.

When he was arrested, it was reported that he blurted out, "I'm sorry; I'm sorry. I killed her. I'm no good. Please shoot me."

We are convinced to this day that had we not brought extraordinary pressure to bear, Linda Velzy would have been another missing child and no crime would have been reported, no one would have been arrested, and Linda would have been just another one of the 50,000 children who disappear every year, and nobody but the family and a few friends take notice, while the murderers continue their lives of molesting, raping, and killing our country's potentially finest young people, a priceless national resource.

After he was arrested, Ricky Knapp made a written confession to the police as well as another confession to the informant and Linda's contact lens and samples of her hair were found in Ricky Knapp's automobile. The pathologist's report indicated that she had died from asphyxiation as a result of a sharp, violent blow to the neck.

During the trial in May 1978, the prosecutor, of course, was not allowed to bring in any past criminal records or convictions, nor, of course, could he introduce into the trial a pattern of behavior which was well known to both Ricky Knapp's friends and the police. Also, of course, the accused was supplied with a defense attorney at State expense.

However, Linda Velzy's character and morals were called into question with no possible defense. Her survivors, including her executor, were not officially notified of any of the legal procedures involving her case and no free legal advice was made available.

Even though Ricky Knapp was convicted on one count of homicide and was sent away to prison as one might expect, a subsequent series of events in New York State courts has not only set aside the conviction, it has disallowed two of the three confessions and some of the evidence. This action was taken as a result of a decision that was made retroactive back to the time of Ricky Knapp's trial.

Now, 5 years later, a district attorney has to retry a confessed murderer on limited evidence and before a court that is unsure about what is allowable evidence, what will be allowed in the future, and what is known fact or substantiated public record but cannot be allowed as evidence in a trial. Through what may be a bizarre and complicated series of court procedures, a rapist and a confessed murdered may once again stalk our streets because one court judge is concerned about possible violation of constitutional rights and a court of appeals is concerned with proper procedures of securing evidence. None of these judges acknowledges the possible danger to society by releasing known criminals who may also possibily rape, murder, or be responsible for the mysterious disappearances of our children.

The survivors of Linda Velzy have not had any decisions overturned and are sentenced to the loss of a life they held, and will hold, precious all the remaining days of their lives. For them, there is no appeal nor even the hope of justice through retribution—only a series of plaguing questions that haunt them as they struggle to reconstruct their lives and toss through sleepless nights, questions that are once more brought to life as society worries about what it should do to protect Ricky Knapp and guarantee him his rights. Such questions are:

One, how do we protect ourselves and our children from persons who want to do us violence when our enforcement agencies, our courts, and our correctional institutions educate and encourage more criminals than they change?

Two, why are there not structures within the criminal justice system that serve, protect, and advocate or the victims of crime, particularly violent crime?

Three, what rights do victims and survivors of victims have in our society?

(*a*) Rights to legal advise; (*b*) Rights to protect their reputation and character; (*c*) Rights to information regarding legal procedures that affect their lives; (*d*) Rights to protection from retribution and intimidation; (*e*) Rights to be heard regarding the impact of the crime; (*f*) Rights to restitution by either the criminal or the State for the damage done to them.

Four, does our system encourage the more experienced criminals to murder their victims because they reduce their chances of being arrested; if arrested, reduce their chances of conviction; and if convicted, reduce the severity of their sentencing?

Five, who holds our courts, juries, and parole boards accountable for the release of violent criminals when irresponsible and possibly illegal decisions are made that result in violence, mysterious disappearance, and homicide?

Six, if lawmakers are not allowed to make laws retroactive, why can judges make their decisions retroactive?

Seven, are our judges more interested in constitutional rights than basic human rights? Maybe our judges and Constitution need to be changed if they cannot protect the safety and lives of our citizens.

Eight, are our juries more interested in procedures than in truth? Maybe our jury system needs to be changed if it cannot make decisions based upon what it knows to be true.

Nine, are our courts more interested in protecting the rights of the accused than in seeing that justice is fairly administered? Maybe the public needs to be more adequately informed and more closely involved in the administration of our justice system.

Ten, how could we become involved in such a set of grotesque circumstances that have robbed our daughter of her life and entangled our lives in continual abuse, pain, and suffering? Unfortunately, we have found answers to this question. Our experience can be, and is, the experience of the parents of 23,000 homicide victims and the parents of approximately 50,000 children reported missing under mysterious circumstances.

Put another way, every 8 minutes, some parents will share some part of our story. As members of the group called Parents of Murdered Children, we hear dozens of stories similar to ours in which there is such turmoil that marriages are broken, families and homes relocated, and siblings are traumatized.

In summary, I ask myself, why is it that this *Linda Velzy* case causes so much public attention and outrage? My conclusion is that it highlights one of the basic issues in our life together as social beings. The issue, as I see it, is that historically one of the most basic and fundamental purposes of government is to provide for the safety and security of its people. Linda's case seems to have demonstrated the total failure and incompetence of our government to provide either safety or justice. Her case seems to symbolize what so many of us feel about the cruelty, indifference, and injustice of our justice system. We have discovered that so many others who have experienced the same tragedy of having their child murdered have also not only been victimized by the homicide, but continue to be victimized by enforcement agencies, mass media, and attorneys, judges, and juries.

Not only was our daughter brutally murdered, but we had to force an investigation by law enforcement agencies. During the trial, by inference and innuendo, our daughter's reputation and character were debased. Now the law wants to set the confessed murderer free. And this, simply because four judges, people in whom we place our highest and most sacred trust for justice, claim that the constitutional rights of this murderer, or possibly some hypothetical murderer in the future, might be violated because he confessed in less than ideal circumstances.

As much as we also respect the constitutional rights, there seem to be more basic human rights as outlined in the Declaration of Independence—that all people have a right to life, liberty, and the pursuit of happiness. Our daughter has been denied the human right of life through no fault of her own, and our judges and juries seem to ignore that fact. As the survivors of the victim, our liberty and the pursuit of happiness is constantly denied even after almost 5 years.

Respectfully, the survivors of Linda Jill Velzy—Carol Velzy, mother; Howard Velzy, father; Richard Velzy, brother; James Velzy, brother.

Thank you, sir.

Senator D'AMATO. Mr. Velzy, I think more officials should have the opportunity to read this statement and hear your remarks. You are not talking about statistics, but you are talking about our children, human beings to whom we pour out our love and hearts.

The incredible thing is that from statments you read today, which are considered irrelevant by our criminal justice system, the fact that testimony would not be allowed, your testimony would not be allowed, is the incredible thing. Justice seems to be tearing itself apart on legal technicalities which do not go to the essence of protecting someone's rights but work against the community as a whole. I think it is incredible that society is demanding we perform and we have not brought this performance about.

It is easier said than done, but in the case of your daughter and subsequent actions of the court system, and also the investigatory arm, police groups and others, the lack of personal attention and care, the fact of the matter is that all too often we have heard accounts such as you have outlined with regard to the almost indifference to the cause of alarm of parents when their children are missing.

As a matter of fact, the missing children bill which was just passed which allows the names of those missing children to be entered into the FBI records to use their computer was violently opposed by the FBI. What a terrible shame to have them, because it is more difficult and because they are afraid it might tax their resources, oppose this bill, as they did.

Fortunately, it was an area in which people came together and demanded that this small movement forward be undertaken.

I am not going to talk to you about what we are attempting to do. I thank you for preparing your statement as you have, being here and sharing your personal loss, a loss which epitomizes what has taken place all too often throughout our land.

Reverend **Velzy**. Thank you, Senator.

Mr. **Marino**. Your statement is an angry one, and I can understand that. I just do not understand how the court of appeals can come to the conclusion it has in this case. I am just as angry as you are at the latest decision. I just do not understand the courts sometimes.

However, aside from that, you and I had a personal conversation a couple years ago with regard to what you thought could be done with this type of defendant in an effort to rehabilitate or somehow to contain this type of violence.

Perhaps you might give us some thoughts you might have on that subject inasmuch as I know you have lived with this for so long now.

Reverend **Velzy**. Yes, Senator. Let me just correct one thing. I am sure there is certain anger in my feeling, but it is more emotion that you hear which involves a lot of emotions. It is not necessarily bitterness. The damage to us and our family has been essentially done. The damage to the rest of society, to the rest of the citizens of Oneonta, and so forth, if this person is released with this kind of pattern, is one more of pity and concern for those people who now have their lives threatened and their children threatened. Therefore, it is a collection of feelings.

You are right. When we talked some time ago, I was a neophyte in this experience of being a survivor of victims and was wrestling with a good many personal emotions and feelings at that time which made it difficult to think as rationally as I might. I am not sure I am over that process. As a matter of fact, I know I am not over that process. That is why I am a member of this organization, Parents of Murdered Children. However, at least I can work a little bit more rationally now.

I would note that the Federal Government just recently has passed a victim's rights bill in Washington. I am not aware of a similar type of legislation in the State of New York. It seems to me that would be a beginning—to provide some of the rights, extend some of the rights of victims and survivors of victims that are extended to criminals and defendants.

Second, in discussion with members of the coalition for criminal justice in the State of New York, we have been talking about the possibility of legislation which would provide for local crimes victims' councils in each one of our communities throughout the State. It would provide resources such as legal counsel and advice. It would support self-help groups, such as Compassionate Friends or Parents of Murdered Children so that the families and the victims can be stabilized in terms of their own feelings and emotions and get back to constructive and productive lives, which is difficult when you have gone through the trauma of being a victim or a survivor of a victim.

Third, and I know it is difficult, I was involved with the last couple go-rounds with the changing of bail law, but it does seem to me that we have to make some changes, even if it involves a constitutional amendment, to use bail or find some means of holding people who have been accused of violent crimes, who have demonstrated a repetitive pattern of behavior—second, third, fourth, a dozen arrests and convictions sometimes—that there be some way in which the courts can order that these people be held for the purpose of public safety. I know that is done very seldom, if done at all, but I think that needs to become the pattern, the norm, rather than the exception, in our court system.

I think that gives you a clue, at least. There are many issues. Victimology has become a new science. There was a World Conference of Victimology in Washington in 1980. There are all kinds of books being written on the subject. I agree with a few ideas and disagree with a great many others.

I am not speaking out of vengeance and I am not speaking out of my desire to see that all criminals are strung up, but I do feel that our judicial system has been overweighted toward the defendant and the criminal. It has essentially ignored, through probably nobody's fault, just simply ignored, the fact that victims have rights, have feelings, and have concerns also.

Mr. MARINO. Thank you very much.

Senator D'AMATO. Doctor, thank you very much for coming here.

Reverend VELZY. Thank you, Senators.

Senator D'AMATO. I would like again to thank all the panelists, and particularly the district attorney's office and Mr. Rutnik, who has done an incredible job in getting together the victims. Thank you very, very much. I think their presence gives testimony to the fact that we are in deep trouble and we have to come up with some solutions to this very vexing problem, to help and to work with local authorities, not just to pontificate but to understand the problems and to work with you as best we can, both on the Federal level and on the State level, to see that this system works more adequately.

Thank you very much for your help.

Our second panel, by the way, is a distinguished panel which is in charge of the prison systems: The Honorable Thomas Coughlin III, commissioner of the New York State Department of Corrections. I thank the commissioner for being here. Mr. J. Kevin McNiff, chairman of the State commission of correctional service.

I might also make mention of the fact that during the presentation of the first panel, the former head of the corrections department, a distinguished professor of law, also I believe an advisor on the criminal codes to the assembly for a number of years, Prof. Peter Preyser, has also joined us. We thank you, Professor, for the help that you have given to this committee.

Commissioner.

STATEMENT OF HON. THOMAS A. COUGHLIN III, COMMISSIONER, NEW YORK STATE DEPARTMENT OF CORRECTION CAMPUS, ALBANY, N.Y.

Mr. COUGHLIN. Thank you, Senator.

I will start off and Kevin will follow.

I have a prepared statement, copies of which are being passed out. I will not take your time to read it.

Senator D'AMATO. We will ask that your statement be included in the record as if read in its entirety following your oral presentation. If you wish to summarize and make your own observations in addition, fine.

Mr. COUGHLIN. Thank you, Senator.

Seven or eight years ago, perhaps going back as far as 10 years ago, the State of New York recognized the momentous problem of violent crime, both violent crime and crime committed by a very small number of people who have the ability to commit 70, 80, or 90 robberies and get arrested again and come back out and commit the crimes again, the so-called career criminal.

We took steps in this State, going back to 1974 and 1975, to target our scarce resources in terms of correctional facilities against that particular type of offender.

The passage of the violent felony offenders law, the series of those laws, the passage of the career criminal statutes in the mid-seventies, have started, just started, to bear fruit.

If you look at the New York State prison system today, it has almost 29,000 inmates in the system today. When I took over that position in the summer of 1979 there were about 19,000 inmates in the system. There was over a 10,000-inmate increase in less than 3 years. In the last 18 months alone we have seen a net increase in the system of some 5,600 inmates.

This has taxed not only the department, but it has taxed the entire State of New York. I made statements last year that I was somewhat embarrassed to go before the legislature, to go before the people of this State, and justify a massive increase in the funding for the Department of Correctional services, somewhere around a $75 million increase last year in our budget alone, when other far more important types of programs, whether they be in mental health, whether they be in education, have to suffer because of this drain on the available resources of this State.

Senator D'AMATO. Commissioner, I will respectfully disagree with you.

Mr. COUGHLIN. OK. Let me finish then.

Senator D'AMATO. Let me tell you why I respectfully disagree with you.

I don't think that you should be embarrassed or ashamed or anything else. I think it is the best money that can be spent. If you have violent criminals, my God, we have to give you the tools and the resources to have places where the violent criminals can be kept. All the mental health money in the world is not going to help people if they have to live with the fear of crime both in their homes and places of business, et cetera. Those whom we treat and release to the community are victimized most by the community and by the thugs, et cetera, who prey on them. I want to tell you something. They are the best dollars that can be spent. We had better do a public education job and let them know, let them know that turning down bond issues will cost. Of course, I think we have to do things in a nonpolitical way. We do not have to redesign the wheel. By the way, none of the press is here, so I am not grand-standing for them. We do not need the politically connected architects on the local scene or the engineers on whatever scene to design a prison, to build one.

You have been through this. You people are experienced on how to expand facilities, to be inventive, to be creative. My God, we have an epidemic. We are in deep trouble.

Mr. COUGHLIN. Senator, I am not that embarrassed.

Senator D'AMATO. Good. Don't be. I hope you are asking for more this year.

Mr. COUGHLIN. The Department's request for 1983-84 includes about $100 million increase over the $75 million for last year.

Senator D'AMATO. Good.

Mr. COUGHLIN. My embarrassment does not run to a cutback in the program.

Senator D'AMATO. OK.

Mr. COUGHLIN. Still, I do have to talk to my colleagues, the other commissioners.

Senator D'AMATO. Their programs all pale in comparison and mean little if we have public disorder and we have the kind of situation which exists today throughout our State. I am not looking to make New York State the whipping boy. Understand that. It is incredible what is going on in the District of Columbia and in many of our urban areas throughout America. This is not a political situation. It is a fact of life. We have come to accept it. People do business behind bars. They live in exclusive penthouses, and they have guards to keep the outside from getting in. It is incredible.

Excuse me, please.

Mr. COUGHLIN. Senator, the State of New York has not shirked its responsibility in this fight on crime. We have been, I think, in the forefront in not knuckling in and not giving up what we started to do 6 or 7 years ago.

I think there are some very interesting facts which sometimes are overlooked in a discussion on crime. There are several States around this country which chose a different approach to crime and were not willing to spend the money that this State is willing to spend to provide the facilities to house the violent and career criminal. Those States—Michigan, Oregon—chose to release people early rather than put the money up for prison cells. This State has not done that. There are several other States that have not done that. Florida and Texas have chosen not to do that.

As a result, some interesting statistics come out. If you look at the growth of crime in the State of Michigan, for example, and the State of Oregon which had early release programs, crime increased in those States some 10 to 11 percent last year. The States which chose not to do that but to provide the prison cells to lock up 5,800 more criminals in an 18-month period, you will see crime increased at a modest 0.7 percent last year in New York State.

I am not becoming complacent. I think there is much more that has to be done in this area, but I think the track which this State is on by zeroing in on the violent criminal, to get the victimizers off the street, is paying off.

In 1974, Senator, in this State 55 or 56 percent of the population in State prisons was doing time for nonviolent crimes. Now, today in the State, 75 percent of the people in State prisons today are doing time for violent crime. It has been a complete turnaround.

I think we need support. We need Federal support to continue that fight.

Mr. MARINO. Good point, Commissioner.

Mr. COUGHLIN. I am getting to the real part of it, Senator.

Senator D'AMATO. I'm ready.

Mr. COUGHLIN. We have taken the hard steps, doing the unpopular things—taking money and putting it into the correctional system, into the criminal justice program. We took the hard step about using unused mental hygiene facilities around the State, which is not very popular but it is the most economical way for a State such as this one to continue on its course of incarceration.

We need some help from the Federal Government. We were fortunate last September, a year ago September, to be the first State that received Federal support in terms of unused Federal installations in the State when the Attorney General gave the State of New York Watertown Air Force Station in Watertown, N.Y. That facility is now open. It is housing 200 inmates with the capacity to go beyond that.

There are several other Federal Facilities available in the State now where we have raised our hand to ask for. The most notable is the facility out in Lockport, N.Y. It is an abandoned Air Force station which has a capacity of 350 inmates.

We have asked for that and the people in the Lockport areas sued the Federal Government, and we are being required to go through this cumbersome process now of getting title to that property. The case is currently in Federal court in the Buffalo area. I hope we are successful on it. Then we have to go to the legislature to ask for some money for it, which I will do.

Interestingly enough, there is a Federal bill which has been around for a while, H.R. 6028, which allows the Federal Government to give this unused property to the State at no cost.

We currently have a bill from the Federal Government wanting $13,000 a month which will pay for the rental of the Watertown Air Force Station with the appraised price somewhere around $3 million they want from us.

Lockport is in the same general neighborhood. I think this property, which never will be sold by the Federal Government for $3 million, could be turned over to the States at no cost. That could be the biggest thing that the Federal Government could do for this department.

There is another area where I think the Federal Government has to become involved in a much more serious way, and that is in the area of narcotics. It becomes very difficult to talk about it because it is such a nebulous subject, but some 40 percent of the population in State prison today has an involvement with drugs.

We all know that many of our violent criminals are also drug addicts and also commit these acts of violence to support their habits. There must be at the Federal level some attention given to the importation of narcotics into this country. The State of New York cannot do that alone. It transcends State values. It is something that the Feds have to become involved in.

Those two issues, Senator, I think are probably the most important in my mind—continued availability of prison space so that we can lock these people up and lock them up for longer periods of time. This is extremely important. There should be some minor changes in terms of criminal law to require certain mandatory consecutive sessions, and the administration will make those proposals this year, but they happen to be State issues which I am sure Senator Marino would not have any problem dealing with.

In conclusion, sir, the Feds have to become involved in this surplus property issue. Let us have that property as expeditiously and as cheaply as possible.

Senator D'AMATO. Thank you very much Commissioner.

[The prepared statement of Mr. Coughlin follows:]

STATEMENT OF HON. THOMAS A. COUGHLIN III, COMMISSIONER, NEW YORK STATE DEPARTMENT OF CORRECTION CAMPUS, ALBANY, N.Y.

I come before you to testify at a time when I have just completed preparations of the coming year's budget for the New York State Department of Correctional Services. In order for the State to continue its commitment to incarcerate violent and repeat felons, New Yorkers are facing the prospect of supporting a prison budget of some $1 billion, taking into account both operating and capital costs in the coming fiscal year.

New York, just as other States in the Nation, have confronted the crime problem with an aggressive assault through tougher laws and with expanded courts and added prosecutors, which have brought stricter prosecution and improved efficiency.

But the response to crime has brought with it a skyrocketing of prison populations—an increase, as a point of fact, of more than 5,600 inmates in the last 18 months alone. And that has brought the need for expanded prisons, added prison staff—a need for more State resources to be devoted to State prisons.

The State has approached the need to expand its correctional system in a multifaceted way.

We have taken unused State institutional space and converted it into prison space, we have built a new reception and classification center with a capacity of more than 1,000, we have in the works three new maximum-security prisons and we have begun a plan to acquire and convert space at mental health institutions.

And we have looked to the Federal Government for help.

In the spring of 1981, we initiated visits to surplus Federal property at vacant Air Force stations in the State in hopes of finding some relief to prison overcrowding. I'm pleased to say that we were on the vanguard of a Federal program designed to turn over Federal military space to the States for prison use.

We were given access last year to the Watertown Air Force Station, and this past summer, that facility was opened as the Watertown correctional facility for more than 200 medium-security inmates.

We had similar hopes of opening a facility at the vacant Lockport Air Force Station in the western part of the State. But a lawsuit against the Federal Government has put the General Services Administration in the position of having to follow costly and time-consuming procedures, which have prevented the transfer of the property to the State. This has occurred despite the emergency nature of the problem in New York.

We have also examined another Air Force facility at Hancock field in Syracuse, which may be closed during 1983.

Both Lockport and Hancock have the potential of relatively inexpensive and speedy conversion to prison use and would help relieve overcrowding in State prisons.

Legislation has been introduced in the House to amend the United States Codes to allow the disposal of surplus property to the States and local governments for correctional facility use. Specifically, this legislation—H.R. 6028, the "Burton-Zeferetti bill"—would permit the Attorney General to sell or lease to any State or local government for use as a correctional facility such surplus real and personal property as the Attorney General might determine to be suitable for the care and rehabilitation of criminal offenders.

Support leading to passage of this legislation, or a similar commitment by Congress, would be an important step not only for New York, but for other States faced with the same prison population crisis.

On all levels of government, our legislators and our elected officials have decried the growth of crime in this Nation and have urged and taken harsh steps to combat this problem that invades our everyday lives.

And these actions have begun to pay off.

The impact of our tough laws and heightened prosecution efforts brought a crime increase of only .7 per cent in New York State last year—the smallest growth since 1969. And the good news doesn't stop there. This year, there is every indication that we have begun to reverse the trend; that we have not only slowed the growth of crime, but we have stopped it and we are reducing.

During the first six months of this year, the New York City Police Department reported that felonies had declined by 4.4 percent compared with the previous year. There are some dramatic and welcome figures here: Murder and manslaughter are down 4 percent, robberies are down almost 7 percent and assaults are down 4.5 percent.

Help from the Federal Government to enable the State to exand its prison capacity in the most efficient way would help New York continue its aggressive fight against crime.

In another area of Federal policy, there is action that can be taken that would have a major impact on crimes.

There is, without question, a relationship between drugs and crime. Trafficking in narcotics is only part of the crime problem—the role played by drugs in the commission of other crimes adds incrementally to the situation.

New York has continued to battle the drug problem with the devotion of State resources and through cooperation with Federal authorities. But we need help at the Federal level.

Cutbacks in Federal aid to the States and the elimination of law enforcement assistance administration money that could be used by New York to combat crime have placed an added burden on New Yorkers. Reduced resources for the Federal Drug Enforcement Agency and weak Federal efforts to stem the influx of drugs compound the burden on New Yorkers.

In many ways, this burden only exacerbates the prison overcrowding problem by contributing to a major increase in drug addiction and drug-related crime.

New York is fulfilling its commitment to its citizens in removing violent and repeat offenders from our communities and improving the quality of life in the State.

This determined policy is not an inexpensive one, but the residents of New York and their elected representatives have in recent years expressed their commitment to toughening our response to crime.

There are ways, however, that the Federal Government can ease the burden on New York's taxpayers with little impact on the Federal Budget. Two of those steps would be the transfer of surplus property to the States for corrections purposes and a renewed commitment to stem the flow of drugs into this country.

I would urge you to support such action.

Crime is a problem that must be shared by all in this nation.

It is up to each State to do its part—and New York is doing its share.

But it is also up to the Federal Government to back up those actions by the States.

Senator D'Amato. Mr. Chairman.

STATEMENT OF J. KEVIN McNIFF, CHAIRMAN, STATE COMMISSION OF CORRECTION, ALBANY, N.Y.

Mr. McNiff. Thank you, Senator, and Senator Marino.

I will merely summarize briefly to give you a picture and concentrate not on the State facilities but more on the county facilities which often, in discussing overcrowding, are forgotten.

Senator D'Amato. We will insert your statement in its entirety in the record following your oral presentation.

Mr. McNiff. Right now we are holding in county facilities outside of New York City over 7,000 inmates, which puts that system, the county system, at 106 percent of capacity.

In the major counties, what we call the large metropolitan counties, overcrowding has climbed to 122 percent of capacity last week.

Some of these countries, the percentages are overwhelming—134, 151, 176, and 208 percent.

Right now aproximately 25 local correctional facilities' populations exceed their capacity.

Since 1978 the county jail population in the State has grown nearly 55 percent. The counties were not prepared for this sudden increase.

I would like also to say that fully two-thirds of local correctional facilities were constructed prior to 1940 with several dating back to the turn of the century.

Last year the commission prepared a report which indicated the correctional facilities in 55 of the 57 counties were in need of capital improvement. The report also estimated that it would cost the counties $191 million to replace outdated facilities and bring existing facilities into compliance with State standards regarding capacity, fire safety, classification, and other constitutionally mandated standards.

It is obvious that the infrastructure of our local correctional system is in need of a major overhaul and improvement.

Last year the commission estimated that the annual cost of operating local correctional facilities to be over $1 million and rising.

In 1982 cost to counties to board inmates in other counties because they do not have space is expected to pass the $5 million mark. This does not include the cost of transporting these inmates and the cost of personnel who must do the transporting.

Therefore, you see that the problem in the counties, because of the failure of the Bond Act, is still with us.

I would like to point out, also, that one-third of the population in these facilities is between 16 to 20 years old. Virtually all of the youths are school dropouts with little or no employment record. There is every indication of a heavy use of drugs and alcohol. It is estimated at least 50 percent of this population in county jails suffer from the disease of alcoholism or drug addiction. All projections point to a continuing rise in the correctional population.

We do not think that the baby boom, which does not include this current population between 16 and 20, the so-called end of the baby boom, is going to have any significant decrease in our county jails. We think until 1980 these populations will go up, and it is obvious to us, and by your presence here you certainly are indicating your support, that there is need for help from the Federal Government, that correctional facilities in counties where tax dollars are decreasing something has to be done not only on the State level but also at the Federal level to enable these people to do their jobs.

Senator D'AMATO. Thank you very much.

[The prepared statement of Mr. McNiff follows:]

STATEMENT BY:
J. KEVIN MC NIFF, CHAIRMAN, NEW YORK STATE
COMMISSION OF CORRECTION
BEFORE SENATE SMALL BUSINESS COMMITTEE
OCTOBER 18, 1982

SENATOR D'AMATO, MEMBERS OF THE PANEL, I AM PLEASED TO BE HERE TODAY TO PRESENT TESTIMONY WITH RESPECT TO THE OVERCROWDING CRISIS WE HAVE IN CORRECTIONS. I AM PARTICULARLY GRATEFUL TO BE ABLE TO SPEAK TO YOU TODAY ABOUT OVERCROWDING IN OUR COUNTY JAILS BECAUSE COUNTY CORRECTIONAL FACILITIES ARE TYPICALLY THE FORGOTTEN COMPONENT IN OUR STATEWIDE SYSTEM OF CORRECTIONS.

COUNTY JAILS IN NEW YORK STATE CURRENTLY HOLD OVER 7,000 INMATES WHICH PUTS THE STATEWIDE SYSTEM OF LOCAL CORRECTIONAL FACILITIES AT 106 PERCENT OF CAPACITY. FEW FACILITIES - LARGE OR SMALL - ARE SPARED THE VEXING PROBLEMS OF DEALING WITH MORE PERSONS THAN THEY CAN ACCOMMODATE. THE MOST PRESSING OVERCROWDING PROBLEMS DO FACE THE LARGE METROPOLITAN COUNTIES WHERE OVERCROWDING CLIMBED TO 122 PERCENT OF CAPACITY LAST WEEK. IN SOME OF THE MAJOR COUNTIES THE OCCUPANCY RATE HAS REACHED SUCH HEIGHTS AS 134 PERCENT, 151 PERCENT, 176 PERCENT AND 208 PERCENT.

AT ANY TIME IN NEW YORK STATE THERE ARE OVER 300 PERSONS COMMITTED TO SPECIFIC COUNTY JAILS WHO MUST BE HOUSED IN JAILS IN OTHER COUNTIES CHIEFLY BECAUSE OF OVERCROWDING. FOR THE MOST PART, THESE OFFENDERS HAVE BEEN SENTENCED PERSONS. RECENTLY, HOWEVER, WE HAVE NOTED A RISE IN THE NUMBER OF PRE-TRIAL PERSONS WHO MUST BE BOARDED-OUT BECAUSE OF OVERCROWDING. THERE ARE APPROXIMATELY 25 LOCAL CORRECTIONAL FACILITIES WHOSE POPULATION EXCEEDS THEIR CAPACITY.

SINCE 1978 THE COUNTY JAIL POPULATION IN THE STATE HAS GROWN NEARLY 55 PERCENT - A RATE OF GROWTH WHICH FRANKLY EXCEEDS THE GROWTH RATE EXPERIENCED

BY EITHER THE STATE CORRECTIONAL SYSTEM OR THE NEW YORK CITY SYSTEM.

UNFORTUNATELY, COUNTY CORRECTIONAL OFFICIALS WERE NOT PREPARED TO COPE WITH THE ALMOST SUDDEN RISE IN THE NUMBER OF PERSONS COMMITTED TO THEIR CUSTODY EITHER AS ACCUSED PERSONS OR CONVICTED OFFENDERS.

WHETHER ONE ATTRIBUTES THE SURGE TO THE MORE PUNITIVE ATTITUDE OF THE PUBLIC TOWARD CRIME, CHANGES IN THE SENTENCING LAWS OR BEEFED-UP RESOURCES FOR PROSECUTORS AND THE COURTS, THE FACT REMAINS THAT LOCAL OFFICIALS DO NOT HAVE THE NECESSARY RESOURCES TO COPE WITH THE SURGING NUMBERS OF PERSONS COMMITTED TO LOCAL FACILITIES.

IN NEW YORK STATE - AND IN MOST PARTS OF THE COUNTRY - THE COUNTY CORRECTIONAL FACILITIES HAVE LONG BEEN THE STEPCHILD OF THE CRIMINAL JUSTICE SYSTEM. FULLY TWO-THIRDS OF OUR LOCAL CORRECTIONAL FACILITIES WERE CONSTRUCTED PRIOR TO 1940 - WITH SEVERAL DATING BACK TO THE TURN OF THE CENTURY.

LAST YEAR, THE COMMISSION PREPARED A REPORT WHICH SAID THAT CORRECTIONAL FACILITIES IN 55 OF THE 57 COUNTIES WERE IN NEED OF CAPITAL IMPROVEMENT. THE REPORT ALSO ESTIMATED THAT IT WOULD COST COUNTIES $191 MILLION TO REPLACE OUTDATED FACILITIES AND BRING EXISTING FACILITIES INTO COMPLIANCE WITH STATE STANDARDS REGARDING CAPACITY, FIRE SAFETY, CLASSIFICATION AND OTHER CONSTITUTIONALLY MANDATED STANDARDS. GIVEN THE 10 PERCENT RISE IN THE LOCAL JAIL POPULATION IN THE LAST YEAR COUPLED WITH INFLATION, THE $191 MILLION FIGURE HAS PROBABLY CLIMBED TO OVER $200 MILLION.

THE INFRASTRUCTURE OF OUR LOCAL CORRECTIONAL SYSTEM IS OBVIOUSLY IN NEED OF A MAJOR OVERHAUL AND IMPROVEMENT.

LAST YEAR THE COMMISSION ESTIMATED THE ANNUAL STATEWIDE COST OF OPERATING LOCAL CORRECTIONAL FACILITIES TO BE OVER $100 MILLION AND RISING. THE 1982 COST TO COUNTIES TO BOARD INMATES IN OTHER COUNTY FACILITIES - ALONE - IS EXPECTED TO PASS THE $5 MILLION MARK. AND THIS FIGURE DOES NOT INCLUDE THE COST TO COUNTIES

FOR TRANSPORTING INMATES BETWEEN COUNTIES AND THE COST OF PERSONNEL WHO MUST DO THE TRANSPORTING.

TURNING TO THE JAIL POPULATION ITSELF WE FIND THAT APPROXIMATELY 53 PERCENT ARE PRE-TRIAL PERSONS WITH THAT PERCENT RISING IN THE METROPOLITAN COUNTIES TO ABOUT 60 PERCENT. HOWEVER, THE OVERCROWDING PROBLEM SEEMS ROOTED AS MUCH IN AN INCREASE IN THE SENTENCED POPULATION AS IN THE PRE-TRIAL POPULATION. IN MANY SMALLER COUNTIES THE SENTENCED POPULATION IS GREATER THAN THE PRE-TRIAL POPULATION.

THE INMATE POPULATION IN OUR LOCAL FACILITIES TENDS TO BE A YOUTHFUL POPULATION WITH ONE-THIRD OF ALL PERSONS FALLING BETWEEN THE AGES OF 16 - 20. VIRTUALLY ALL OF THE YOUTHS ARE SCHOOL DROPOUTS WITH LITTLE OR NO EMPLOYMENT RECORD. A HEAVY USE OF DRUGS AND ALCOHOL ALSO TENDS TO CHARACTERIZE THIS POPULATION. IT IS ESTIMATED THAT AT LEAST 50 PERCENT OF THIS POPULATION SUFFER FROM THE DISEASE OF ALCOHOLISM OR DRUG ADDICTION. THE NUMBER OF FACILITIES WITH MEANINGFUL PROGRAMS CAN BE COUNTED ON THE FINGERS OF ONE HAND.

ALL PROJECTIONS SEEM TO POINT TO A CONTINUING RISE IN THE CORRECTIONAL POPULATION. EVEN THOSE WHO ATTRIBUTE THE PRISON POPULATION INCREASE TO DEMOGRAPHIC SHIFTS CAUSED BY THE "BABY BOOM" FORESEE NO DECREASE UNTIL ABOUT 1990. MANY OF THESE DEMOGRAPHERS, HOWEVER, ALSO ADMIT THAT THE RATE OF INCREASE WILL BE GREATER BECAUSE OF THE GROWING PUNITIVENESS IN DEALING WITH OFFENDERS.

WE MIGHT ALSO CONSIDER THE IMPLICATION IN THE FACT THAT ONE-THIRD OF OUR JAIL POPULATION - THE 16-20 CLASS - WAS BORN AFTER THE BABY BOOM. THEIR PRESENCE IN SUCH LARGE NUMBERS MIGHT SIGNIFY YET ANOTHER FACTOR WHICH MAY BE CONTRIBUTING TO OUR RISING JAIL POPULATION.

THERE ARE OBVIOUSLY A CONSIDERABLE NUMBER OF VARIABLES AT PLAY WHICH ARE CONTRIBUTING TO OUR POPULATION SURGE.

OVER THE PAST TEN YEARS MUCH REFORM HAS BEEN ACHIEVED IN THE OPERATIONS OF LOCAL CORRECTIONAL FACILITIES. THE LEVEL OF CORRECTIONAL ADMINISTRATION HAS VASTLY IMPROVED, MANPOWER HAS INCREASED, STAFF TRAINING PROGRAMS HAVE BEEN INSTITUTED, TREATMENT PROGRAMS HAVE BEEN STARTED FOR INMATES AND SEVERAL COUNTIES HAVE IMPROVED THEIR PHYSICAL FACILITIES. MANY COUNTIES, IN FACT, MADE SIZABLE COMMITMENTS OF ASSISTANCE TO BRING COUNTY FACILITIES INTO COMPLIANCE WITH STATE STANDARDS AND CONSTITUTIONAL REQUIREMENTS. BUT THESE EFFORTS WERE ONLY THE BEGINNING AND THEY DID NOT FORESEE THE MAJOR POPULATION SURGE OF RECENT YEARS.

IN THE LAST YEAR THE COMMISSION OF CORRECTION HAS INTENSIFIED ITS ASSISTANCE TO COUNTIES TO PLAN NEW FACILITIES AND EXPAND EXISTING ONES. THE COMMISSION ALSO EXTENDED ITS ROLE IN SEEKING OUT ALL AVAILABLE HOUSING SPACE WHICH COULD BE USED IN ITS BOARDING-OUT PROGRAM.

THE COMMISSION ALSO INSTITUTED A PROGRAM TO PROVIDE DIRECT TECHNICAL ASSISTANCE TO SELECTED COUNTIES TO ESTABLISH JAIL POPULATION MANAGEMENT COMMITTEES WHOSE GOAL IT IS TO FIND WAYS TO REDUCE OR CONTAIN THE SIZE OF JAIL POPULATIONS. WE RECOGNIZE THE FACT THAT COUNTIES CANNOT SIMPLY BUILD THEIR WAY OUT OF THEIR JAIL CRISIS.

THE COMMISSION HAS ALSO SUPPORTED STATE LEGISLATION TO EASE THE BURDEN ON LOCAL CORRECTIONAL ADMINISTRATORS WITH REGARD TO THE SEPARATION AND CLASSIFICATION OF CERTAIN OFFENDERS.

THE SCOPE OF THE PROBLEM WHICH BEFALLS US, HOWEVER, IS OF THE MAGNITUDE WHICH EXCEEDS THE RESOURCES OF OUR COUNTIES AND OUR STATE.

WHETHER WE START WITH THE COUNTIES WHICH MUST DEAL WITH THE EXTRAORDINARY BURDEN OF OVERCROWDING IN SPITE OF SHRINKING TAX DOLLARS - OR WITH THE LARGE NUMBER OF DISAFFECTED YOUNG INMATES WHO ARE ILL PREPARED TO ASSUME MEANINGFUL EMPLOYMENT - WE ARE CLEARLY FACING A DILEMMA WHICH BEGS FOR THE ATTENTION OF THE FEDERAL GOVERNMENT.

WE VERY MUCH WELCOME THE ATTENTION WHICH THE COMMITTEE ON SMALL BUSINESS IS GIVING THIS MATTER AND TRUST THAT OUR COMMENTS WILL BE OF HELP TO YOU.

I THANK YOU FOR THIS OPPORTUNITY AND I WOULD BE PLEASED TO RESPOND TO ANY QUESTIONS WHICH YOU MIGHT HAVE.

Senator D'AMATO. I would like to ask the commissioner a question.

Commissioner, you made reference to the fact that back in 1976 or 1978 there was a percentage of nonviolent criminals in our prison system, about 75 percent. Is that correct?

Mr. COUGHLIN. Fifty-five percent of the State prison in 1974.

Senator D'AMATO. Now it is 25 percent?

Mr. COUGHLIN. Yes, sir—less than 25 percent.

Senator D'AMATO. Less than 25 percent. It would seem we can maximize that prison space if we could get that 25 percent less in other facilities which need not be nearly as secure. Is that correct?

Mr. COUGHLIN. Well, that 25 percent is multiple offenders. In other words, these are the fellows—these are the burglars, which is a nonviolent crime.

Senator D'AMATO. You consider that nonviolent?

Mr. COUGHLIN. Burglaries are nonviolent crimes, Senator.

Senator D'AMATO. I want to tell you something. I think they present one of the greatest dangers we face today. When you can't go to sleep at night because some of them even get thrills out of breaking into you house at 4:30 in the morning. God forbid if you wake up what is going to take place. They are only classified as nonviolent. I think the classification is in error.

You are obviously doing a better job, and when I say you are doing a better job, the statistics don't—you ought to keep the burglars in there, believe me. It is incredible. It is a danger. It is an encroachment. It is a deprivation if I have ever seen one. I would certainly classify it as a violent act, anybody who breaks in, particularly in the evening hours.

I have had two situations within the past 2 weeks, one where they broke into the house across the street from me, the other where they broke into the house across the street from my mother. Both times they came in at 4:30 in the morning. Now mysteriously our dog died of poisoning, and the two dogs which belonged to the woman whose house they broke into across the street from my mother, they died. They didn't die of old age, either.

Mr. COUGHLIN. Senator, burglars in this State go to jail, especially career burglars.

Although there are a number of people around the State who criticize us and criticize us soundly for incarcerating burglars——

Senator D'AMATO. I don't criticize you.

Mr. COUGHLIN. I happen to feel as you do, Senator. while we have been paying a lot of attention to the violent criminal, there is also a very serious issue of quality of life crimes. That is what I classify the burglar as.

Senator D'AMATO. All right.

Mr. COUGHLIN. We have a number of burglars locked up in the State for long periods of time.

Senator D'AMATO. We agree on that one. I think we agree on many things. No. 1, I am going to support that concept in the bill to see to it that the Federal Government turn over without cost—don't nickle and dime local governments and State governments who really have enough problems—those facilities which can be utilized for prisons, for medium security or maximum security, whatever the case might be. I do not think it behooves us—we are talking about $150 billion deficit, and we really are not going to substantially improve that position by charging $3 million for prison facilities. That is my own personal point of view.

Let me ask you something. Do you favor the present parole system? Do you think it is working well? Understand that you just heard six people testify, and every one of them was attacked, or their family was attacked, by someone who was out on parole.

I will prejudice myself. I will tell you right out that I think it is nothing more than early release because you do not have enough space.

Mr. COUGHLIN. Senator, in this State the Parole Division has not, and to my knowledge will not, release individuals early because of a space problem.

Senator D'AMATO. You really believe that?

Mr. COUGHLIN. In fact, Senator, the statistics show it in this State, that parole releases last year were down dramatically. Parole would release some 45 percent of the people that they see the first time. That figure dropped to some 30 percent.

I would like to make an issue, and Ed Hammock, who is the chairman of Parole, can probably do it much better than I can.

Senator D'AMATO. It comes better from you. It is more well respected from you because you are there. You do not have to defend it. If you defend your own department, we understood how you reach. It has more credibility coming from you.

Mr. COUGHLIN. Let me tell you what Parole is doing in this State. It increases the size of the prison capacity, but that is OK. Let me tell you what it is doing in this State.

The workload in local district attorneys' offices and courts in the State is outrageous. When you have a 60- or 70-percent increase in felony indictments in one county in New York City, if all those people who were indicted went to a full jury trial, everything would grind to a halt. That is just a fact of life, Senator. We have to recognize it.

What happens in the State and what caused the decline in parole releases last year was a set of guidelines which the parole board uses to decide when a person is released. In this State we have indeterminate sentencing. Most of the sentences tend to be from the courts 1 to 3 years, which is the minimum that you can get. That sentence is the result of a plea bargain or sentence bargain.

When that person comes to State prison looking at a 1-year minimum, the parole board, by statute, is permitted not only to look at his behavior in the institution, but also, because it was a court-set minimum, the facts around the instant crime.

If a person pleads from robbery 2 to robbery 3, I can assure you, Senator, that the parole board applies the robbery 2 guidelines. That is why people do not get out after a minimum sentence but they will do 18 or 20 months for a robbery 3 based on the facts in the instant crime of a robbery 2. That is what the parole board is doing in this State.

At some point in time, Senator, you are going to have to turn these people loose. The average length of stay in State prison when I took over in 1979 was less than 24 months per person. In a 3-year period that average length of stay jumped to over 30 months.

If you apply that to a system that might pass through 60,000 people a year, that is a very, very significant increase in incarceration in this State.

I think that the issue of determinate sentencing which would do away with the parole board is lumped together. You say determinate sentencing and do away with the parole board. I think there should be a mix. There should be a flat sentence where a person, if he commits a crime, is going to go to jail for 3 years. That sentence should be based on guidelines.

There also should be a period of community supervision, and that is something that the parole board can do, and does very well.

Senator D'AMATO. Senator Marino, do you have any more questions?

Mr. MARINO. I agree with that statement, Tom. I think there is a role for the parole board. They have been tough in their decisions, and their guidelines are tough. I don't think they can be blamed for any of the present problems we see.

I am just wondering whether we are now accepting State-ready prisoners or whether there still is a problem with the locals.

Mr. COUGHLIN. I can assure you that as far as the city of New York is concerned, where 75 or 80 percent of our population comes from, they are off Riker's Island within 48 hours and into the system. There is no backup of State-ready inmates at Riker's Island.

Some of the other countries around the State are having to wait 2 and 3 days, but there are no major waits.

Mr. MARINO. If we were to proceed with preventive detention as a concept and pass it into law in New York State, what kind of a bulge would that give you at the local level? I assume we then would be creating an overpopulation problem greater than we have.

Mr. COUGHLIN. Yes, it would, Senator. Right now indications are that without that the pretrial numbers in local facilities are increasing, and that would increase it a lot more and, unless there were other means of relieving such as building or whatever, that would create intolerable problems at the local level.

Senator D'AMATO. I have a statistic here which says to me that in spite of your good efforts, Tom, the fact of the matter is that prison time has not increased in terms of the length of the sentence that is served prior to release, but, indeed, between 1980 and 1981 changed slightly the other way. In 1980 the average time served before parole was 24.3 months. In 1981 it is 23.7 months.

Mr. COUGHLIN. That does not take into account people who do not get paroled, Senator. In other words, the figure I stated on the average length of stay takes into account everybody in the system, not just those who are paroled.

Senator D'AMATO. I care about those who get paroled, too. There were six people here. Tom, you know, look—and I use the familiarity here because I don't want this to be perceived as being D'Amato out to embarass Coughlin or what you stand for or the work you are doing. I am convinced that you are undertaking an incredible responsibility with limited resources and doing a fine job. I have nothing but the utmost in admiration. Senator Marino sings you praises in terms of what you have been doing.

However, the point of the matter is that the guys who are coming out on parole are coming out with less time in 1981 than they did in 1980. That is a fact. We can always play around with these numbers. That is a fact.

Mr. COUGHLIN. Senator, I have not seen that specific statistic. Let me understand what you are saying. People who get paroled serve less time in 1981 as opposed to 1980 by some percentage point. I don't know what it is.

Senator D'AMATO. Right. Where the courts may have been giving longer sentences, thereby eliminating many who ordinarily would come up for parole, and that we see taking place, the fact of the matter is that the parole department is moving through the system and giving people less time in 1981 than they did in 1980 before they qualify, on an average. The average went from 24.3 months to 23.7 months.

When I look at some of the statistics in terms of the kinds of people that they parole—average robber, 2½ years before parole; burglar, 1 year and 10 months; feloneous assault, 2 years before parole; rapist, 3½ years before parole. For God's sake, they should not parole any of them, only in very special, extraordinary cases.

What do we need to wake us up that these people, for the most part, are sick, are going to continue it. Unless you find something dramatic, they just are going to come out over and over and over. Who sets the policy and the standards?

Mr. COUGHLIN. Senator.

Senator D'AMATO. You are a criminologist. You know. Am I wrong? I would like you to tell me, Am I wrong?

Mr. COUGHLIN. About what?

Senator D'AMATO. You are letting rapists go out—not you, but any policy that gives parole to a rapist, the kind of person we see who has attacked these people—this is incredible. Why? They only are going to be out on that street doing the same damned thing.

Mr. COUGHLIN. The question is, Senator, what was the minimum sentence for a rapist in the State?

Senator D'AMATO. What is the maximum sentence?

Mr. COUGHLIN. It depends on the particular crime, Senator. Some rapists—not all rapists get 25-year-to-life sentences. Many, many, many rapists in this State get minimum, 2½- to 5-year sentences.

Senator D'AMATO. Can you keep them to 5?

Mr. COUGHLIN. No, sir, you can't keep them to 5.

Senator D'AMATO. Why?

Mr. COUGHLIN. Because they are eligible for parole in 2½ years.

Senator D'AMATO. That is the problem, then. Isn't that the problem? We put our finger on it. Why do we make a rapist—and you have a minimum and a maximum sentence—elibible for parole at the end of 2½ years? Of course, when he is in a confined society, when he is in a society that, if he deviates someone is going to break his arm or his leg, generally the prisoners themselves, he then is judged to be a good, model prisoner. He is a model prisoner because he is confined to it; he is forced to do it. You put him out on the street and there it is, a predator on our society.

Mr. COUGHLIN. Senator, a rapist who is sentenced to 2½ to 5 years——

Senator D'AMATO. What does he serve usually?

Mr. COUGHLIN. He serves a minimum of 2½, plus, as you said, 36 months, probably. Then he is released as a function of the good-time statute in the State.

Senator D'AMATO. What you need to run the prison.

Mr. COUGHLIN. Not necessarily. The good-time proposals or the operative good time in this State is almost an automatic reduction of the maximum sentence.

Senator D'AMATO. That I understand. I understand those provisions which say that if you are not unruly, if you don't break up this place, if you follow the rules, then "we give you a credit of" so many days per so many days that you served. I understand that, and that gives you some ability to at least have some kind of order within the prison system.

Mr. COUGHLIN. As administrator if this department, it gives me no ability to control it. If you really want to do something to allow the Department of Corrections to control and make a sentence meaningful, we should have in this State a merit good-time system where the only way they get good time is if they earn it. If they don't earn it, they don't get it.

Senator D'AMATO. Are you suggesting that?

Mr. COUGHLIN. We talked about it at length in this State.

Mr. PREISER. You time allowance committee is supposed to allow the good times. If they have not earned it, they should not get it.

Mr. COUGHLIN. Mr. Preiser, having been the commissioner of this department and having been involved in a lot of the rewrites which went on in the penal law back in the late sixties and early seventies, you know as well as I do that the good-time provision now has nothing whatever to do with earned good time. All it says is if you do not get in trouble, if you don't get written up for violations of the rules, you get your good time. However, you can do your sentence playing basketball.

Mr. PREISER. Perhaps you changed that regulation.

Mr. COUGHLIN. That is what I am suggesting.

Mr. PREISER. No. The law gives you the authority to regulate. When I left, there was a good-time allowance committee which sat and decided how much time each inmate was going to be allowed. It was not always the maximum.

Mr. COUGHLIN. There still are time allowance committees.

Mr. PREISER. That is what I thought.

Mr. COUGHLIN. Inmates still lose good time for infractions of the rules. If someone assaults another inmate or assaults a corrections officer and gets a superintendent's proceedings, one of the penalties which comes out of that superintendent's proceeding is loss of all good time. The time allowance committees do not restore the good time, but that is for a very, very few number of people.

Most of the people, when they come up for their conditional release—this is not parole now but this is conditional release—most of the people who come up for conditional release have not had serious infractions within their history within their system. They don't get loss of good time, and the time allowance committee looks at their institutional record and they see that they have not been involved in assaultive behavior or misconduct and so they have nothing to take the good time away for. The statute requires me to look at it based on performance in the institution. I can take it away. However, if he has not done anything in the institution, I cannot take it away.

That is why we propose a requirement that the person become involved in programs and not shoot basketballs for 2½ years. If you want to shoot basketballs for 2½ years, you are going to lose your good time. I do not have that ability now.

Mr. PREISER. I suggest you do. It was in the regulations before and it would be there today.

Senator D'AMATO. Maybe that would be a point you could give us an answer on. Mr. Preiser indicates that he believes that you do.

Let me ask you this: How long was it from the time that the State signed the agreement for the Watertown facility until the inmates in that facility were placed there, approximately?

Mr. COUGHLIN. A year.

Senator D'AMATO. How long would it take to build such a facility?

Mr. COUGHLIN. Actually to construct it from scratch?

Senator D'AMATO. Yes.

Mr. COUGHLIN. Probably 4 years.

Senator D'AMATO. So that there was a very meaningful accomplishment in that situation.

Mr. COUGHLIN. Absolutely. We would have been there in 4 months if we had not been sued six times.

Senator D'AMATO. A year is not so bad. You have a facility.

I read a very interesting article and I commend it to you. It is in the Wall Street Journal today. It talks about need for more space for inmates and that maybe modular cells is the answer. Maybe you could take a look. It is by Dan Rothbard, staff reporter for the Wall Street Journal. It is in today's Journal.

It talks about the utilization of modular maximums to meet some of the problems we have.

Mr. COUGHLIN. Let me enlighten you somewhat on that. This State has been involved in the construction of modular facilities for the past year and a half. We have over—we put on in this State modular types of construction that provided over 1,000 cells just last year.

We are looking at some proposals now for firms which have truck-in maximum security jails. Based on our experience in this State with the construction of maximum security modulars, we feel we can build them as quickly on the site than having them trucked in by some firm in California.

Our experience with the special housing units at Eastern, at Bedford Hills, which are maximum security add-ons, the time of construction was somewhere around 4 months' scratch time. That is as good as any modular operation.

Senator D'AMATO. What cost factor in terms of doing it that way do you have? How much have you been able to reduce what otherwise would be the cost of a cell?

Mr. COUGHLIN. We right now are constructing three new maximum security prisons. The cost per cell for new maximum security prisons is about $100,000 a cell.

This modular construction that we have tried, the cost is somewhere in the neighborhood of $26,000 a cell. Therefore, it is much less expensive to do it modular.

The problem with modular is that it tends to be housing space. You cannot keep sticking another 250 guys at Great Meadow and not put up the ancillary space for dining, medical services, and so on. There is a limit to the modular capacity, but we do have some plans in the State as options which we will present this year to the legislature of doing more modular construction.

Senator D'AMATO. I have one final question. How many additional spaces or cells, or what additional capacity do you contemplate will be developed during the next year?

Mr. COUGHLIN. We have to bring on next year 1,700 new cells to meet our projected population increase. Our budget and our capital planning have presented a request for those 1,700 new cells.

Senator D'AMATO. You anticipate, then, that there will be an additional 1,700 cells by the end of next year that will be developed?

Mr. COUGHLIN. Yes, sir.

Senator D'AMATO. Let me thank you both very much for coming here and sharing your expertise and your thoughts and giving us your firsthand understanding of what is taking place. I very much appreciate it.

I would like to call our third panel and thank them as well as apologize for our running behind schedule. We have the U.S. attorney from the western district, Sal Martoche; the U.S. attorney from the northern district, Fred Scullin; and the president of the New York State District Attorneys Association, whose office has been so cooperative in helping us today, District Attorney Sol Greenberg.

Is Mr. Delassanro, deputy commissioner of the State division of criminal justice, going to participate in this panel?

Gentlemen, thank you very much for being here with us. We are interested in listening to your statements and getting your observations in connection with this. Inasmuch as our district attorney is front and center, why don't you start this panel, Sol?

STATEMENT OF SOL GREENBERG, PRESIDENT, NEW YORK STATE DISTRICT ATTORNEYS ASSOCIATION, ALBANY, N.Y.—Continued

Mr. GREENBERG. You said Sol and not Sal, didn't you?

Senator D'AMATO. That is right.

Mr. GREENBERG. Senator, I want to thank you for giving me the opportunity to speak here.

Senator D'AMATO. Senator Marino, the deputy assistant attorney general, Professor Preiser, and the others who constitute the panel, this is a unique opportunity for me in the position of wearing two hats, namely, one as president of the DA's association for the State of New York and the other as Albany County district attorney, to give some of my thoughts with respect to the criminal justice system, particularly as it affects us specifically in Albany County and generally in the State of New York.

I believe that Reverend Velzy said it all with respect to frustration that confronts prosecutors throughout the State and throughout the United States regarding the rules and regulations which have been created either by statute or by court decision regarding the matter of restrictions and limitations on the part of police agencies, investigative agencies in investigating serious crimes.

As Reverend Velzy pointed out, and it is a matter of record in the official report, where you know who the perpetrator of the crime is but yet the police are certainly constrained in the manner in which they must approach the interrogation of a defendant, today with our statutes as determined by the decisions of the court, not only the court of appeals of the State of New York, it is almost impossible to interrogate any suspect.

A defendant who may be the target of an investigation can absolutely refuse to talk to any police agency or the DA or anybody in the law enforcement field. A noncustodial individual as a witness today under the *People* v. *Skinner* decision does not have to talk to anybody if he or she does not want to do so.

What we are doing is placing a tremendous burden upon investigative agencies in the manner of investigating crimes, at least in the State of New York and I am sure that this goes over into other jurisdictions in the United States.

We have had turf problems as to who was going to do what with respect to police agencies. I think that is resolving itself now because of the cooperation that exists among various police agencies, certainly in my jurisdiction, not only with local agencies but also with the Federal and State agencies working in conjunction with local agencies.

Since the time of becoming president of the DA's association at West Point this last summer, my distingusihed colleague, Sal Martoche, whom you will hear from, appeared before our group and indicated that the Attorney General of the United States wanted to create the law enforcement coordinating committees between State and Federal prosecutors for the purpose of trying to put together some of our resources, working with each other, cross endorsing U.S. attorneys as assistant DA's or assistant DA's as U.S. attorneys. The association accepted it well.

Since Mr. Martoche has become U.S. attorney in the western district of New York, what has happened is that he already has had his meeting with various law enforcement agencies, and the DA's association was represented.

Mr. Scullin, our newest U.S. attorney in the State of New York, who is now the U.S. attorney for this particular district, the northern district of New York, has scheduled the first meeting, having just recently become the U.S. attorney. He has scheduled the first meeting for this coming Thursday with a major meeting to be held in November with the appearance of Deputy Attorney General Gulliano, who is in charge of this particular program.

We are very happy with this cooperation. We have cooperated in the past with Federal agencies, and we will continue in the future, hopefully on a more regular basis.

What confronts us as problems obviously is the drug field, which is one of the greatest fields around here that has to be overcome. I think the fact that we have drugs has been the source of a lot of burglaries or robberies which you hear about as well as a lot of larcenies, because people have to push their habits. They cannot afford to pay the high prices for a highly lucrative business.

The sooner we can get Federal funds to help support local agencies in the matter of fighting the drug scene, I think the sooner we will start getting a reduction in other crimes that are collaterally related to the drug scene.

The matter of prisons, obviously the voters of the State of New York last election turned down the referendum, the bond issue, for one-half billion dollars. I see that the President last week announced $200 million to be put into the crime prevention field with $40 million of it designated for the assistance of jail problems and prison problems in 50 States, hardly enough to begin with, frankly. It is hardly enough to start.

We have suffered on a local level the very fact of a total drying up recently this year of the LEAA program under the Justice Department, which went into effect in about 1968. Over $8 billion was spent in that program, it not more.

Some good programs came of it. For instance, my office was the beneficiary of a sex offense unit, which was originally through seed money supplied through Federal grant operating for about an 18-month period. It operated so well that our success in convicting rapists and sodomists was so successful, so high. What happened was, and the intent of creating the seed money was, that the locals pick it up. What happened was that the Albany County Legislature saw fit to pick it up. It was financed locally.

One of the greatest programs financed by LEAA was the career criminal program. Those funds, the promise of 3-year funding ended up being 18-month funding. The program worked so effectively, so well, particularly in the violent felony offenses and the armed felony violent offenses, which have been the cause of overcrowding of jails and, as Commissioner Coughlin indicated, 75 percent of these inmates today are those who were the beneficiaries of sentences as a result of violent felony offenses. That has worked so well that what has happened is, upon the drying up of those funds, the State of New York has seen fit, through the Governor's action and the action of Senator Marino in the senate and the speaker of the house in the assembly, to created the laws to create funds to help subsidize DA offices, not every DA's office in the State but certain select DA offices throughout the State, for the purpose of continuing what we now call the major offense felony prosecution program, MOFP.

These have been very effective, but what we need, Senator D'Amato, on the Federal level, is we just cannot tie and cut off the umbilical cord regarding the support needed on a local basis from Federal financing. We cannot cut that off totally, which has happened with LEAA.

Crime is here to stay. It has gone up. It continues to rise.

We in Albany County have been very fortunate. I always have said publicly, and I say it here now, that the tone of the criminal justice system in any county is set by our superior court judges. If you have tough judges on the top, it is going to filter right on down through into the criminal community. This has proven itself in Albany County despite the fact that the annual crime report issued by the division of criminal justice services for last year indicated that there was an 11-percent crime increase in Albany County.

When you are talking about violent crime, our calendars have never been as low as they have this year, our pending calendars in the heavy, violent criminal field, only because we have tough enforcement.

Chief Justice of the United States Burger, in speaking before the American Bar Association in Houston, in February 1981, indicated that one of the things necessary to help put a lid on crime would be the fact that you must have swift arrest, an assurance of paying a penalty for it and doing it quickly, with the finality ultimately of sentence.

We have cases now, as was indicated in the *Velzy* case by the father of the victim—and he has lived with this for 5 years, and it was only last week that the court of appeals reversed the conviction—we live with cases for years and years and years. Is it a society redeemed when it has all the wealth that it has? It has the best court systems, so to speak. It provides defendants with the best type of defenses at public expense. Is it redeemed when, with all these things, with the crime rate the way it is, when we cannot even walk safely down our streets?

Obviously, the goal is to make our streets safe. We have talked about constitutional rights and the enforcement of constitutional rights, but the ninth amendment is something that never has been used by the courts; namely, to protect the public against fear from crime. That has been totally overlooked. We talk about all the other amendments—the right to proper search and seizure, the right to counsel, the right to speedy trial—but, yet, what has happened is we have never focused our judicial attention upon protecting the rights of the public.

I could go on and on, but I will stop at this point because you have other people here.

Thank you for the opportunity.

Senator D'AMATO. Thank you very much, Mr. District Attorney. Sal Martoche.

STATEMENT OF SALVATORE R. MARTOCHE, U.S. ATTORNEY, WESTERN DISTRICT OF NEW YORK

Mr. MARTOCHE. Senator D'Amato, Senator Marino, it is a pleasure to be here with you and the other distinguished members of this panel.

In the interest of brevity, I will not repeat the contents of the statement that I have prepared. I will submit that for the record.

Senator D'AMATO. All of your statements will be included in the record as if read in their entirety.

Mr. MARTOCHE. I would like to point out, Senator, that a great deal of the initiatives that I see in the Justice Department these days in the push toward a better and more balanced criminal justice program seems to me very reminiscent of a great deal of the leadership and bills submitted by Senator Marino for a number of years in the State legislature. I would just like to point that out.

I thought I was reading Marino bills as I got the list of the initiatives from the Justice Department.

I would also like to point out, Senator D'Amato, that the narcotics initiative, the task force which was recently formed by the President and by Attorney General Smith, seemed to me to be a perfect place, and this is a perfect forum to describe how very important those task forces will be in the fight against crime.

It has been said over and over again by a number of people, including Sol Greenberg, about the fact that drugs, narcotics, are such an important part of criminal activity.

The $160 to $200 million in new money that is being offered to the Justice Department to attack this problem I think will reap enormous benefits. However, I would be remiss if I did not point out that we should have learned by now the lesson of the past which says that money alone is not going to be the salvation of the criminal justice system. It seems to me that we have to depend on the integrity and hard work and dedication of people in the system to provide additional leadership, leadership which seems to have been lacking in many cases in the past.

To go along with this, Senator D'Amato, the LECC's, the Law Enforcement Coordinating Committees, to which Mr. Greenberg referred, are an enormous step. The elitism that we heard about in relationship to Federal prosecutors and Federal law enforcement for too many years has got to be ended and is being ended.

While many people may say that this is something that has been attempted before, it is clear to me that never has the leadership been provided from the top as it has in this instance. The Attorney General himself, along with Associate Attorney General Gulliano, has appeared at numerous meetings throughout this country to make it clear where they stand on the question of greater cooperation between law enforcement agencies.

The cross designation that was referred to by Sol Greenberg I think is one very important example of the kinds of things that can be done. There is no need for there to be the kind of turf problems and jurisdictional boundaries that have hindered law enforcement in the past.

I would like to point out that one of the things that grew out of the Law Enforcement Coordinating Committee in my district was the formation of a Federal arson task force. It was decided that arson was, indeed, one of the major problems in the western district of New York. Therefore, an attempt is being made to point out where Federal jurisdiction can be used through the mail fraud and conspiracy legislation which is presently on the books and to provide forensic services that may not always be available to particularly the smaller communities. The AFT, the FBI, and the Postal Inspectors are all playing a role in this. As a matter of fact, on October 27, I believe, we will have a seminar which is going to be directed at coordinating and fighting this problem in our district.

Ultimately, I think I would like to close my remarks by saying that the spirit of cooperation that must exist between law enforcement officials at every level appears to be blossoming and blooming with the leadership being provided by the Justice Department.

I feel that additional resources are not the total answer, but certainly local communities will be looking, and are looking, which has been clear from their comments to me in the Law Enforcement Coordinating Committees, through the State District Attorneys Conference which I attended, and through conversations with Mr.

Greenberg—it is on their minds as to what can be done for them in the way of additional resources.

I will be happy to answer any questions you have. Again, let me thank you, Senator, for inviting me to participate.

Senator D'AMATO. Thank you very much for being with us.

[The prepared statement of Mr. Martoche follows:]

TESTIMONY OF SALVATORE R. MARTOCHE

Mr. Chairman--

I appreciate the opportunity to appear today on behalf of the Department of Justice to discuss crime and small business. In view of the major new law enforcement initiative announced by the President last Thursday, this is a timely hearing. Needless to say, crime is a major concern to small business men as it is to all Americans. Previous estimates have been that as many as one-third of business failures are the result of theft losses. While the bulk of these losses are related to shoplifting, employee pilferage, and other offenses outside the jurisdiction of federal law enforcement officials, the Department of Justice and this Administration are firmly committed to strengthened law enforcement at all levels of government and in all regions of our nation.

What I would like to do today is to discuss very briefly some of the major species of criminal activity which most often claim small businessmen as their victims and our responses to them. I will then yield to my colleague who will comment on legislation which has been proposed to strengthen federal law enforcement efforts. Of course, no discussion of crime in the United States today can ignore the national narcotics problem. Beginning at the street level, narcotics addicts are notorious for the commission of property crimes as a means of raising the revenue necessary to support their expensive habits. The cycle of drug addiction and crime is too well known to require an aberration. Some studies indicated that more than half of all crimes are drug related.

At the next level of narcotics crime, we have the major traffickers who often use the fantastic profits from their drug trade to bankroll other criminal enterprises. Just as we have in recent years seen traditional organized crime syndicates become involved in the drug trade, so have we witnessed narcotics traffickers branch out into other areas of criminal activity. Moreover, in some areas, the enormous proceeds of narcotics activity has led to takeover by traffickers of legitimate businesses including banks.

The point of this is to state an obvious truth: that a meaningful reduction of crime is possible only if we can make significant inroads into the narcotics trade. The new program announced last week will, we believe, enable us to roll back the flood of narcotics that threaten to engulf the United States. Building upon the success of the South Florida Task Force on Crime, we will create an additional 12 task forces in key areas throughout the country including New York. To provide the resources necessary to staff these new task forces, the Administration will be seeking funding of between 1,100 and 1,200 additional federal investigative and prosecutive positions. This will establish a framework within which we can mount an effective interdepartmental attack on narcotics trafficking which has become an almost $80 billion dollar per year business.

On a broader law enforcement front, we have moved in recent months to improve cooperation and coordination of federal, State and local law enforcement efforts through Law Enforcement Coordinating Committees in every Judicial District of the United States.

While similar efforts have been made in the past, those earlier coordination efforts lacked the high-level support necessary for success. The new Law Enforcement Coordinating Committee program has the strong support of the Department of Justice -- in fact, the Attorney General has personally attended several Committee meetings. This improved coordination among law enforcement officials at all levels of government is already beginning to pay dividends.

Of course, small businessmen, like all other citizens, are sometimes victimized by virtually every form of crime. There are several criminal offenses, however, which are most often aimed at small businesses. The most common is fraud. While there are a myriad of varieties of fraud, there are several particular species of fraud which seem to recur with alarming frequency with businessmen as their victims. First is investment fraud, the most common variation of which is called the "Ponzi" scheme after one of its most notorious practitioners, Carlos Ponzi. The Ponzi scheme induces its victims to invest their savings through the promise of fantastic dividends. Part of the money solicited is then returned to the victims as "earnings" which leads them to invest more money and to encourage friends and associates to do the same. These schemes grow like a pyramid with investments of late joiners going to pay "earnings" to early participants until such time as the promotor disappears allowing the pyramid to collapse often leaving hundreds of victims in financial ruin.

A second species of fraud, the franchise fraud scheme, claims prospective businessmen as its victim. Through a wide variety of franchise schemes, unscrupulous promoters have bilked thousands of would-be businessmen out of their life savings.

The advance fee scheme is another common business fraud in which loan brokers charge fees or "points" in return for their promise to extend or secure financing for business projects. Of course, the tight money situation of recent years has caused advance fee schemes to proliferate as some small businessmen have been desperate for financing to remodel, expand, or invest in new projects.

Another business-oriented fraud is the tax schelter scheme. A good example of this scheme is the coal tax shelter case tried in New York two years ago. In that case, businessmen seeking tax shelters invested more than $8 million in phony coal mining operations set up as limited partnerships. To add insult of injury, these investments were made after the Internal Revenue Service had changed tax regulations so as to deny tax deductions for such investments.

A major area of fraud activity which impacts both directly and indirectly upon businessmen is insurance fraud. This takes many forms. In past cases, an agent for an insurance company defrauded policyholders out of thousands of dollars by accepting premium payments in exchange for phony insurance policies. More often, it is the insurance company that is the victim of fraud. Of course, such fraud is a serious threat to small insurance companies and drives up insurance rates for honest policyholders. One of the most serious varieties of insurance fraud is the arson-for-profit scheme which has reached epidemic proportions. Estimates are that more than one-third of building fires are the result of arson, often related to insurance fraud.

Of course, there are many other areas of criminal activity which affect small businessmen. Often, organized crime seeks to take control of a particular line of business in an area and will resort to any measure to drive out competition. In a major West Coast organized crime case, a syndicate attempt to control tavern operations in an area produced 35 tavern arsons, a murder, and numerous instances of extortion. In another case, the FBI was instrumental in breaking up a major organized crime ring in New York which had gained control of garbage collection in the Bronx.

Public corruption often claims businessmen as victims. One of the largest recent cases involving local corruption resulted in 25 convictions in Chicago. In those cases, city electrical inspectors received payoffs from electrical contractors in order to approve electrical work done in connection with building or renovation projects. There were also several instances where, in exchange for a payoff, the corrupt city officials would issue work permits to unlicensed contractors. Payoffs ranged from a flat dollar fee to a percentage of the gross from the project. This was all part of the longstanding practice that required electrical contractors to go along with local corruption in order to survive. Of course, this practice also elevated the cost of construction in the area and constituted a serious threat to life and safety as electrical work was judged more on the size of the bribe than on the quality of the installation.

Of course, the list of business related crime is virtually endless. Because every dollar fraudulently taken from federal business assistance programs reduces the aid available to the small business community, legitimate small businesses suffer from fraud against the Small Business Administration. Planned bankruptcies injure small creditors and often result in unfair competition for legitimate small businesses. And the list goes on.

In all of these areas I have mentioned, we are very active in investigating and prosecuting crime and in working with State and local officials to identify and prosecute those responsible. While we cannot realistically hope to eradicate crime entirely in any of these areas, I believe that we can roll back crime levels. Of course, this requires the cooperation of everyone and we are grateful for the leadership of the Senator from New York in combating those offenses which are of particular concern to small businesses.

Senator D'Amato. Now we will hear from our new U.S. attorney from the northern district, Fred Scullin.

STATEMENT OF FREDERICK J. SCULLIN, JR., U.S. ATTORNEY, NORTHERN DISTRICT OF NEW YORK

Mr. Scullin. Thank you, Senator.

With your permission, I would like to read a brief statement on behalf of the Department of Justice concerning the legislative highlights which the Justice Department is supporting and has supported.

As you know, the centerpiece of our legislative program has been the Violent Crime and Drug Enforcement Improvements Act, S. 2572, of which you were an early cosponsor.

This bill was overwhelmingly approved by the Senate on September 30 by a vote of 95 to 1. I understand a major effort is being made to secure House action on this bill during the postelection session.

In summary, there are nine different titles to the omnibus crime bill. Title I consists of comprehensive reforms of Federal bail laws. Among other things, these bail reforms would authorize pretrial detention of criminal defendants where no condition of bail would reasonably assure appearance at trial or protection of the community. In other words, courts can now consider, or will be able to consider, danger to the community in addition to the risk of flight in making bail determinations.

Among the other improvements in the bail reform title of S. 2572 is a reversal of the present presumption in favor of release on bail pending appeal after a conviction and provision for judicial inquiry into the source of moneys used for bail.

A second major title of S. 2572 is title VI relating to the forfeiture of the proceeds and assets of criminal enterprises. These amendments would make a number of important improvements in existing forfeiture laws. For example, title VI of S. 2572 would authorize criminal forfeiture actions in all drug cases, not just those involving so-called continuing criminal enterprises.

The forfeiture amendments would also expand the types of property subject to forfeiture and would establish procedures for freezing assets to prevent their being hidden, removed, or conveyed before the judicial forfeiture proceedings can be completed. S. 2572 also contains provisions in title IX to strengthen and improve civil forfeiture procedures.

Title VIII of S. 2572 would facilitate donation to State and local governments of Federal surplus property appropriate for prison use. Some discussion already has been had on that topic today.

Although some properties have already been conveyed to States to cure prison overcrowding, we need legislation to expand this effort to help State and local governments. Title VIII of S. 2572 is virtually identical to another bill, S. 1422, which was approved by the Senate earlier this year. That has not been reported out of the House subcommittee as yet.

There are, of course, other provisions in S. 2572 which are very important. Title VII, for example, would overhaul our sentencing system to provide for determinate sentences subject to guidelines developed by a national sentencing commission to replace the existing system where sentences vary widely from court to court. Sentences imposed under the proposed system would actually be served as parole would be abolished.

Senator D'AMATO. Read that again—parole would be abolished. It sounds good.

Mr. SCULLIN. The department thinks it does, too, Senator.

Senator D'AMATO. On the State level for some crimes, I kept hearing somebody say, "Oh, we have this in our system." If it is not working, maybe they should, as Professor Preiser says, where they demonstrate good, affirmative conduct, then they get time off for that affirmative conduct, not just because you were a nice person or you did not break the rules but time off is given for some kind of affirmative behavior.

I still am shocked with the fact that six out of six peopole who were here before us who were attacked, victimized, or their families were, in the cruelest of manners, all were attacked by prior felony offenders who were out on parole.

Yet, there is the institutional defense. We have all defended our institutions at times, whether we were local prosecutors or governmental officials. We defend doing business the way we do it because we know the system, and why should people ask questions? I think people have a right to ask questions.

It seems to me that with those kinds of statistics around that we had better have a system which says that once you have broken the law and you have committed these violent offenses and you come back a second or a third time, at some point in time we ought to say, "We are not giving you parole. You are going to serve out this time right to its completion."

What do you think about that? There are two or three prosecutors here, two on the Federal level and one on the local level. What do you think?

Mr. SCULLIN. Senator, let me speak on behalf of Sal and myself. We have discussed this before we came here today.

As you know, I recently have been appointed as U.S. attorney for the northern district. I have 13 years of background experience as a prosecutor, both in this State and in the State of Florida. Most of that time was in organized crime investigation and prosecution.

I feel this type of legislation is badly overdue. We have known for a number of years—and statistics have born out over a number of years—that there is a great deal of problems with our bail system and the fact that we cannot control the recidivist who is out on the street, continually on the street. Every time he is arrested, he is out again. Crimes are being committed over and over again while people are on bail.

Mr. MARTOCHE. Senator, it seems to me that the key ingredient to any change which puts in communities' standards or danger to communities in addition to those which traditionally have been in must require the proper kinds of constitutional safeguards. It appears that this legislation contains those safeguards.

That is a concern of mine and I think of many other prosecutors—that there be mechanisms so that there is not abuse. However, frankly, the kind of system we have now which allows people to make a charade of the fact it is more than simply the return of the individual before the panel which is going to motivate them in setting bail, that means there is legislative reform long overdue.

Mr. MARINO. Do you think this bill being proposed at the Federal level would work at the State level?

Mr. MARTOCHE. I truthfully don't think it would. It appears to me that at the State level, with the tremendous value in this State of crime, that the problem has long been, as you know, Senator, if we had the hearing which was necessary to provide the constitutional safeguards that there would be a tendency to use that hearing whether it was necessary to be used or not. Depending on the position taken by the judiciary in interpreting how extensive that hearing would be, it could serve as a greater delay, and this system already is overtaxed.

To answer your question, I think it will largely depend on how the judges would react to it.

Mr. GREENBERG. I indicated earlier that the tone of the system is set by superior court judges. If you have tough judges there, you are going to find that, whether or not you like it, you have preventive detention. You are talking about people. Whatever name you want to give it, it exists. The record speaks for itself as to what effect that has upon the public and upon the crime scene and upon a professional criminal.

Senator D'AMATO. Fred, would you want to finish your statement?

Mr. SCULLIN. I pretty much highlighted the parts of the criminal justice legislative program which the department has supported and is supporting. The one thing I was going to add, which I believe has been touched upon already, is the fact that the President and Attorney General have proposed these new task forces which, hopefully, will tie in with what Mr. Greenberg has been talking about, the Law Enforcement Coordination Committees. I think this is one of the best vehicles for bringing State, local, and Federal agencies together in a concerted, coordinated, concentrated effort to deal with criminal problems that I have seen in all my years of being a prosecutor.

Senator D'AMATO. Thank you very much, Fred.

[The prepared statement of Mr. Scullin follows:]

TESTIMONY OF FREDERICK J. SCULLIN, JR.

Mr. Chairman--

I appreciate the opportunity to follow-up and to highlight the legislative initiatives which the Department of Justice is supporting in an effort to strengthen federal law enforcement.

As you know, the centerpiece of our legislative program has been the Violent Crime and Drug Enforcement Improvements Act, S. 2572, of which you were an early co-sponsor. This bill was overwhelmingly approved by the Senate on September 30 by a vote of 95 to 1. A major effort will be made to secure House action of this bill during the post-election session.

In summary, there are nine different titles to the omnibus crime bill. Title I consists of comprehensive reforms of federal bail laws. Among other things, these bail reforms would authorize pretrial detention of criminal defendants where no condition of bail would reasonably assure appearance at trial or protection of the community. In other words, courts consider danger to the community in addition to flight risk in making bail determinations. Among the other improvements in the bail reform title of S. 2572 are a reversal of the present presumption in favor of release on bail pending appeal after a conviction and provision for judicial inquiry into the source of moneys used for bail.

A second major title of S. 2572 is Title VI relating to forfeiture of the proceeds and assets of criminal enterprises. These amendments would make a number of important improvements in existing forfeiture laws. For example, Title VI of S. 2572 would authorize criminal forfeiture actions in all drug cases, not just those involving so-called continuing criminal enterprises.

The forfeiture amendments would also expand the types of property subject to forfeiture and would establish procedures for "freezing" assets to prevent their being hidden, removed or conveyed before judicial forfeiture proceedings can be completed. S. 2572 also contains provisions in Title IX to strengthen and improve civil forfeiture procedures.

With respect to forfeiture, separate legislation is moving on this issue as the House approved H.R. 7140 before the Congress recessed. Enactment of forfeiture legislation does not therefore depend entirely upon processing of the omnibus crime bill.

Title VIII of S. 2572 would facilitate donation to State and local governments of federal surplus property appropriate for prison use. Although some properties have already been conveyed to States to cure prison overcrowding, we need legislation to expand this effort to help State and local governments. Title VIII of S. 2572 is virtually identical to S. 1422 which was approved by the Senate earlier this year. Unfortunately, the separate surplus property donation bill is bottled up in the House Government Operations Committee.

There are, of course, other provisions in S. 2572 which are very important. Title VII, for example, would overhaul our sentencing system to provide for determinate sentences subject to guidelines developed by a national sentercing commission to replace the existing system where sentences vary widely from court to court. Sentences imposed under the proposed system would actually be served as parole would be abolished.

Part of the "Miscellaneous" title of S. 2572, Title IX, provides for federal jurisdiction over pharmacy robberies where the robbery is carried out to obtain controlled substances. This legislation has been strongly supported by such organizations as the National Association of Retail Druggists and would enable federal authorities to assist State and local officials in the investigation and prosecution of pharmacy robberies in appropriate cases.

A second major criminal justice legislative initiative is the Criminal justice Reform Act of 1982, S. 2903 and H.R. 7117. This bill would reform the insanity defense, the Exclusionary Rule and habeas corpus laws.

As the President announced last Thursday, the Administration will be seeking funding for an additional 1,100 to 1,200 investigative and prosecutive positions as part of the new task forces directed at narcotics enforcement. This appropriations request will also seek funds for expansion of federal prisons to house an additional 1,200 federal prisoners.

In summary, Mr. Chairman, these are the highlights of our criminal justice legislative program. We will be pleased to respond to any questions regarding our administrative or legislative efforts.

Senator D'AMATO. Mr. Delassandro, Deputy Commissioner of the State Division of Criminal Justice.

STATEMENT OF ADAM DELASSANDRO, DEPUTY COMMISSIONER, NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES

Mr. DELASSANDRO. Senator D'Amato, Senator Marino, I want to express Commissioner Rogers regrets for not being here due to a prior commitment.

I am no longer involved in the frontline operation of criminal justice so maybe my testimony will not be quite as exciting, but I am involved in the support aspect of criminal justice and providing information, which I think in some respects is almost as important as the frontline operations of the district attorneys, police, and so forth.

Without information, you cannot really have a good idea of what is going on in the area of crime, nor can you tell how well the programs and the legislation which come into place are working.

I would like to give you a brief overview of the crime situation in New York State, which is not quite as depressing as it might appear to be to some of us.

In 1981, the index crimes in New York State, which is the statistical bellwether for measuring the relative level of crime in this country, rose less than 1 percent as compared to 1980 when it rose 10.5 percent and 1979 when it was 6.5 percent. Therefore, while it is still going up, the pace has slowed down considerably.

That by itself might not be enough to raise one's hopes, because it has happened in the past where it went down or slowed down 1 year and then the succeeding year it went up precipitously. However, when you look at it in conjunction with other things which have happened, I think there is a basis for some hope.

In New York State clearances went up 5.5 percent, total arrests, felony arrests, felony indictments, convictions after indictment, prison sentences—all in conjunction with the reduce rate of increase, which would appear to me, at least, to show that the criminal justice system is beginning to have its effect.

During the past decade when most of the time crime was going up continuously, the criminal justice system took quite a few criticisms. Therefore, now that it looks better, I think they should take some of the credit.

Senator D'AMATO. Mr. Delassandro, I work at being constrained. I used to be very outspoken as a Senator, and probably it is not worth too much. I have worked at being somewhat restrained, as Senator Marino might be able to confirm, in terms of the way I generally have been known to express myself.

I think we can take very, very, very little comfort in the fact that the crimes against our persons in our homes and our families have gone up only seven-tenths of 1 percent in the past year. It really makes no impression upon me whatsoever. It is outrageous.

Again, Mr. Delassandro, I do not see that this is the problem or the fault of any one administration or that it is the fault of any one person, so that we have an understanding that I am not attempting to fix responsibility on a particular administration. In no way am I doing that.

I am suggesting to you that we have terribly failed in our primary responsibility of Government when we talk about the crime rate only going up 1 percent. We saw the six victims here. What incredible horror they have gone through, they and their families. Incredible. The human dimensions of this seem to be lost in statistics because somebody can say, "Well, we are holding them longer than ever before." The victims are forgotten; they are nameless; they are faceless; they are statistics.

God, when you saw that one woman who came in here, Pamela Cooke. She was only a bank teller. They didn't even beat her or rob her. They just had a gun placed at her head, and she still cannot even recount that without breaking down.

There was the young lady whose throat was slashed. I saw the pictures of that slashing. Incredible horror. I didn't even want to see it again when the District Attorney's people wanted to show it. I said, "My gosh, don't show it."

I have to tell you something. We are losing the war. We had better mobilize for a war.

I don't care what administration it is. I don't care what President it is. I don't care whether he is in my party or somebody else's party, I think we have not committed enough on every single level. I am not looking to pass the buck. We have not committed enough at every single level in seeing that we have domestic tranquility and that people can live free from fear.

When I have to leave my house and the last thing I do is to make sure the floodlights are on, when I have to go out and get another dog because I am afraid to leave my family and my house without there being a watchdog to alarm us; when people live in prisons in reverse in their homes; and their businesses, when they conduct them, are shuttered up and boarded with buzzer systems, et cetera; when they are beaten over the head like this poor little gentleman, I want to tell you something: I don't take solace in the fact, and I don't think we can.

I do not direct this at you personally, but I think we have become so institutionalized, so hardened to it, that we have lost. We have absolutely accepted that this is the way it is and it cannot be any different.

If we have to mobilize the National Guard to protect our subway systems and to make it possible for people to go to work and get the animals off the street, somehow the rights of John Q. Citizen have been forgotten. You know something? If we have to hire more assistant district attorneys, if we have to build more prisons, if we have to see to it they they have the resources necessary, I cannot think—and I said this to Commissioner Couglin—of a more important battle that we have to mobilize to wage and win and turn this around.

Don't take my suggestions. I understand that I am a layman in this area. However, if we cannot bring together the people who can say these are where the deficiencies are in the system, this is what we must do to turn it around, then something is sadly lacking. That is our No. 1 responsibility—domestic tranquility.

It does not make sense to provide an educational opportunity for our youngsters if they are raped, shot, and killed on our campuses.

There is one other thing that I note. Not only is crime on the increase—granted, for 1 year we take solace that it only went up 0.7 of 1 percent—but look at the nature of the crimes. They are crimes against the person. They are not satisfied with just robbing someone, but then they shoot them and hit them on the head, for no reason other than to strike out, to hurt, to maim. It is a far different type of crime. The quality of the crime has become much more heinous and directed toward the person. I find that something that should shock us all. We had better wake up.

I am sorry to have interrupted you with that little emotional expression of feelings, but I feel them. I do not want you to believe that I aimed them at the State of New York or a particular administration. We are all in this and we had better come together. We had better come together.

Mr. DELASSANDRO. Although I am in the support portion of criminal justice right now, I spent 27 years in the New York City Police Department, so I am not unaware of the crime problem. I agree with you completely that it is a terrible situation, and has been a terrible situation.

Senator D'AMATO. They used to rob cars down there, now they don't even bother going after them anymore.

Mr. DELASSANDRO. The important thing to note, though, is that everything is relative. While it has been getting worse, I see a little light at the end of the tunnel. It is still a long, dark tunnel.

Not only did crime go up very little last year, but the first 6 months of this year in New York City crime went down 5 percent. Most of those were violent felonies.

In New York State, the first quarter of this year, it went down almost 10 percent. The FBI report which will be released tomorrow will show a decrease. That is not to say that we should become complacent, but I think it shows that the criminal justice process is beginning to have some effect on the problem of crime. I think we have to take hope from that. I don't think we can just continue to preach gloom. I think we have to recognize that it is a tough fight, that we have been making strong efforts to combat it, and it looks like we may be having some effect on it.

In New York City, for example, they have been focusing on the robbery recidivists. The program started about 18 months ago. They asked our assistance in going through our criminal history file to identify those individuals who had multiple robbery arrests and at least one robbery conviction. We identified over 18,000 of those. We gave them the list of the 18,000. They selected 7,000. We marked in our criminal history file those 7,000 individuals, so that when they are subsequently rearrested we have an early warning system. We notify them and that alerts them to take extra care in preparing the case and in gathering their evidence.

Prosecutors can go into court with a little confidence that are going to have a good case and that it is not going to be thrown out because of carelessness in case preparation.

As a result of the 18 months of that concentration, they have had 5,000 fewer robberies in New York City and 15,000 fewer burglaries, which was a surprise to them because they were focusing on robbery and the long-held theory that criminals are specialists. It appears that today's criminal is the opportunist who, whenever and wherever the opportunity presents itself, will commit the crime for whatever purpose.

They have not only put a great deal of robbers out of the mainstream, but they also have had a very significant effect on burglars, which ties in with what you were speaking to Commissioner Coughlin about before. Burglars certainly are not to be treated lightly.

The career criminal program, to which Mr. Greenberg referred before, is another program which has been supported by Federal moneys. This robbery recidivists program was started with Federal moneys. The promise system, which is the prosecutors' management information system, was started with Federal moneys. The offeneder base transaction statistics program, which we established in New York State was done with Federal moneys.

While the LEAA program did have some weaknesses, any large program will have those problems. It provided criminal justice with the opportunity to establish and design new programs for which they had the ideas but for which they did not have the resources.

President Reagan has indicated his concern with violent felony crime. He has done something for the drug program. I think it is appropriate that the Federal Government become directly involved in prosecution of illicit drugs. However, I think most crime is a State and local problem. It is usually a violation of State law. I think it is best for the State and local officials to address those problems directly.

I would like to urge you very strongly to impress upon the administration that the local and State people need assistance to continue to design these innovative programs which are beginning to have effect. While we still have a very serious problem, as would be indicated by the fact that every 24 hours in New York State we have 6 murders, 15 rapes, 329 robberies, 164 aggravated assaults, 952 burglaries, 1,464 larcenies, and 373 motor vehicle thefts—that is every 24 hours in New York State. That is a very glum, very dim picture.

However, I think we are making some inroads. I may be seeing the light in a very unrealistic manner, but I think it is there. If we continue the fight, I think we can overcome.

Thank you for the opportunity.

Senator D'AMATO. Thank you very much, Mr. Delassandro.

Senator Marino.

Mr. MARINO. I wonder if you are not overly optimistic in this whole area of how we are doing it, what direction we are going, in the direction of crime. When we consider we have something like 750,000 felonies a year in this State, when you also consider that 5,600 are in and out of prison in 1 year, that is all we are handling.

I think the Senator has discussed some of these statistics. We really are not dealing with crime in New York State. We are not helping the Sal Martoches of the world or the Sol Greenbergs or Mr. Scullin. They probably need double the size of staff that they have.

We do not have enough judges. We do not have enough cops. We do not have enough of the basics—parole officers, probation officers. That is where the problem lies.

I do not think we need programs. I think we need personnel, manpower, et cetera.

The State of New York cannot afford, nor can the localities afford, to supply this kind of personnel because we are too overburdened now with providing welfare services and everything else.

I know everybody always looks to the Federal Government, but that is where most of the money goes. Hopefully, some of it will come back. The Federal Government, it seems to me, has to somehow tax our people to a point where we are going to put more emphasis and priority on personnel and people in the system.

In the industrial States—perhaps we can target what States are going to get this money, those with the large cities. However, if we do not do that, as the Senator has said, we are going to be overwhelmed more and more. It is a crushing burden that is despicable to the point where our people cannot live quietly and comfortably in the State. That is the problem.

We need more numbers, it seems to me, more than programs.

Mr. **Delassandro**. I do not disagree with you.

The police department in New York City has 22,000 as opposed to 29,000 several years ago.

Mr. **Marino**. Right.

Mr. **Delassandro**. I do not disagree that we need more people. I would respectfully disagree that programs are not going to be useful. You can have all the people in the world, but if they are not doing their work in an intelligent, planned, and effective manner, they are not going to have the results that you want.

I know from my own experience that you cannot just keep on adding staff because you reach a point of diminishing return. You need additional staff, obviously, but you also need the planning to make those people do the work more efficiently. A combination of the two will provide the results we want.

Senator **D'Amato**. Thank you very much.

I would like to thank our distinguished law enforcement people who have been here, our district attorney and our two U.S. attorneys.

If you see anything you think could be helpful to this committee in maximizing and utilizing existing tools to their fullest in what you consider to be a priority item, including legislative reform at the Federal or State level, please submit that to Senator Marino, myself, and this committee so that we and our staff would have an opportunity to evaluate and make that information available to our colleagues in both the legislative body here in New York State and in the Congress.

Mr. **Martoche**. Senator, may I make one final remark?

The phraseology you chose to use earlier about a war on crime, it sounds almost trite but I really think that is what is required on the part of people in positions such as yours and that of Senator Marino, who really have given the leadership in this direction, but we need to infuse others with it. It is just as much a war as any war against any threat from the outside that we are facing. Somehow we never face up to it.

Senator **D'Amato**. Thank you. Again, I am going to reiterate that I think we are losing the war. By any standard of judgment we are losing the war. We are losing the war when the city of New York had 117,000, or thereabouts, over 100,000, automobile larcenies and only, I think, 17 arrests. We are losing it. They have turned their backs. They have said, "Look, in terms of the quality of life, we see this as being a minor, piddling thing. We have more important things to do."

We are losing the war when crimes against one's person, burglaries, break-ins, et cetera, are treated with such a cavalier attitude, and in some cases the police officials do not even bother making an entry because the victim was not beaten or something or because the burglar was chased out before he or she had an opportunity to come away with something of monetay value. They do not even put it into the report, the Nassau County police. It is incredible.

As State Senator Marino has said, we need the personnel; we need the commitment; we cannot have the buckpassing; we cannot say it is a Federal responsibility nor that it is a State one. We have to maximize resources.

I will tell you something. People are better off taking their garbage to the incinerator, the local incinerator, and cleaning their own streets than having a situation where they cannot walk down a clean street. Stop and think about it. Where are our priorities?

What about a transit system? What good is a transit system if you cannot take it, if you are fearful of your life? What good is it? Who is going to take it eventually? What is going to happen to the jobs and the job opportunities if you build all the wonderful sewage treatment plants that we need to keep our environment clean if the people, the industries, et cetera, leave the area because the quality of life has deteriorated to the point where people say, "I'm not going to take it anymore," and if business executives who make the decisions say, "No way am I going to subject my family and myself, et cetera, to these kinds of situations?"

I think that is what we are talking about. I think it is that serious. I see it in our neighborhoods. I see it in our schools. I see it where I live, Nassau County, a suburban community. People move there to be safe and give their kids a good education, so that when they sent them to school they would not have to worry about their being assaulted, et cetera. That is no longer the case.

That is the problem. Ours is to try to mobilize and come up with the answers and the solutions to deal with those problems.

I thank you all for coming in.

I will now call our final panel. I apologize again for the delay. I will try to keep our remarks to a minimum.

The panel consists of Mr. Peter Kehoe, New York State Sheriffs' Association; Mr. John Canfield, New York State Troopers Police Benevolent Association; Mr. Joseph Dominelli, police chief, and president, New York State Chiefs of Police Association; and Mr. Peter Reilly, president of the Police Conference of New York.

First of all, I apologize for the lateness. We will take any of your written remarks in their entirety to be inserted in the record immediately following your oral presentations.

We will start with Joseph Dominelli, police chief, and president, New York State Chiefs of Police Association.

Please proceed with your remarks. Thank you all for coming in.

STATEMENT OF JOSEPH DOMINELLI, POLICE CHIEF, AND PRESIDENT, NEW YORK STATE CHIEFS OF POLICE ASSOCIATION, ROTTERDAM, N.Y.

Mr. DOMINELLI. I have no prepared statement, Senator, but I would just like to add a couple comments which I feel would be appropriate.

Everything you have said, I agree with. You have the feeling and the dedication required to win this war on crime. You understand the problem. You have to feel it.

I have been a police officer for 35 years. I have seen the full spectrum. I can recall the days when the police officer's job was a rather menial job. Today he is at war every single day that he goes to work. Why?

There seems to be no respect for the law. The discipline of our society has broken down. We are bombarded with lawsuits for trying to do the job.

You have a person who now becomes rather passive. That is the danger with which we are confronted. He is being inhibited from doing his job.

You know, when I hear the words "war on crime," I think they are most appropriate. If we were really to muster the forces that would be necessary to turn this whole thing around, it would require the resources and financial capabilities of a war.

If we had foreign persons come into this country, infiltrate this country, and make some kind of crazy statement that they were going to overthrow this Government, we would come down on them like you can't believe. Yet, we do not do it in this war on crime.

I have traveled all over the United States. I have been to every major city. The one thing I was always told in the past 2 years has been, "Don't go out. Don't walk at night." That is a disgrace.

I said to Senators in Washington and to Congressmen, "If I can't walk the streets in this Nation's Capital at night, we are really, really in trouble." I said, "We don't need a police department in the District of Columbia. We need the 82d Airborne Division. That's what we need."

I spend nights in my hotel room and would have a fear of walking the streets. This is the United States of America, a civilized society?

Yes; we are in trouble. There is only one way you are going to turn it around. You have to provide the resources to local and State governments directly from the Federal Government.

We don't need any LEAA with $9 billion to throw away on crazy research projects and kooky programs. I have read them all. When anybody tells me that they gave direct aid out of the LEAA resource funds of $9 billion to local police departments, I don't think it was 10 percent that went to local departments. That is how I feel about it.

I am phasing out my career, really, as an active police chief. I do so with severe reservations as to the future of this profession. I do not know how we are going to turn this around except with direct involvement of the Federal Government, with direct subsidies to local government.

The local taxpayer cannot afford a police department anymore because the taxes are killing him. How are you going to increase the size of your department when you cannot get the money to do it from local governments?

Prisons? Sure, we need prisons. There is only one way you are going to do it. Take the criminals off the street of this State and this country. The only way you are going to do that is by putting them in prisons.

As I said, I have no prepared statement other than these comments which I am making now. I could go on further, but I think you probably would like to hear from my other colleagues here.

Senator D'AMATO. Joe, I want to give a figure which Senator Marino's office has. I wish I had had it earlier. This is absolutely mind-boggling.

In 1960 in New York City there were 19,000 police officers and they handled 15,200 reported violent crimes. In 1980, 20 years later, 22,000 New York City police had to handle 157,000 reported violent felonies. I will say it again: 15,000 in 1960, 157,000 in 1980. If that is not an epidemic, I don't know what is.

Mr. DOMINELLI. It is like you said, Senator, if you can't ride the subways——

Senator D'AMATO. And, so that people understand, by the way, that this is not something confined to metropolitan New York, I understand that the numbers and the statistics show the same and greater proportional increases in terms of crimes in a 20-year period in the cities of Rochester and Buffalo. Just so we understand, this is an epidemic and it is nationwide.

When you talk about Washington, D.C., I can tell you that the Associate Attorney General and I have come together. That is how we got to work on this, because I chair the D.C. Committee.

It is incredible what is taking place. Talk about a dangerous place to live and to work and to be; Washington, D.C., is that place.

We have attempted to set up a number of programs to deal with that, to try to stem that incredible tide. This speaks more eloquently than anything. These are the facts.

Thank you, Joe, for being with us.

Mr. CANFIELD. Thank you, John, for being here with us, too.

STATEMENT OF JOHN R. CANFIELD, NEW YORK STATE TROOPERS POLICE BENEVOLENT ASSOCIATION, ALBANY, N.Y.

Mr. CANFIELD. Senator D'Amato, Senator Marino, I have a prepared statement which will be sent to you by my office regarding this. I also have a very short statement for today, if I may read it.

Senator D'AMATO. Certainly.

Mr. CANFIELD. My name is John R. Canfield and I am president of the Police Benevolent Association of the New York State Troopers, Inc., with offices located at 112 State Street in Albany, N.Y. The PBA is an employee organization that represents the interests of members of the New York State Police.

The PBA and I am honored to be invited by Senator Alphonse D'Amato to testify before this subcommittee.

To remain within time constraints, I will limit my statement to one aspect of the criminal justice system our members see as a problem. My office is preparing a package to forward to you in reponse to the questions raised by you, Senator D'Amato, and Senator Lowell Weicker, Jr., in the letter inviting me to appear.

There is no question of the adverse impact of crime upon the community and small business in New York. My members see it every day as consumers and in the course of their duties investigating violations of law. The volume of crime is distressing. Crime, as widespread to the extent it has reached today, indicates one thing to me. The criminal feels in his own mind he can win. He believes the odds are in his favor. He knows that if he commits a crime, one of the following will happen:

(A) He may not be apprehended;

(B) He will be "no billed" by a grand jury;

(C) He will be able to prolong his trial date to such an extent that the witnesses will either forget the exact circumstances of the crime, be unable to be located, and in some cases even die;

(D) He will beat the charge through a legal loophole which may not even absolve him of the criminal act;

(E) He will be released after winning one of the several pretrial hearings to which he is entitled;

(F) He will be able to jump bail;

(G) He will win a reversal of his conviction at the appellate division;

(H) He will win a reversal of his conviction in the court of appeals;

(I) The U.S. Supreme Court will reverse his conviction.

Then after all of this he can start a lawsuit against the police officer who arrested him. If by chance he is arrested, indicted, loses all his appeals, he might then get away without any prison time. If he does get prison time, it is unlikely he will serve even 2½ years for a crime as serious as robbery in which he forcibly stole property, most likely from a small businessman.

The bottom line is that the odds in favor of the criminal aren't bad, and don't think they don't know it. Many have been arrested before, beat the system, and think it's easy.

My members are tired of criminals having all the odds in their favor. Police are discouraged by having to make life-or-death split-second decisions in a dark alley on a rainy night only to be told years later in a Supreme Court decision that they were wrong, this by a panel of judges who split their decision 5 to 4, not being able to agree among themselves and who were not even present that night experiencing the stress and pressures of the incident.

If we cut those odds the criminals have in their favor and give them to the police, the community, and the victims, the war will start turning in our favor. We can cut those odds by stopping crimes before they are committed.

The absolutely necessary element to accomplish this is swift and certain punishment. If a criminal knows he will be dealt with swiftly and with certainty, he will no longer have those odds in his favor. He must know without a doubt he will be punished and removed from society.

I liken it to professional sports—hockey, baskeball, or baseball. We have all seen the professional football player, 270 pounds, physically honed razor sharp, and at the peak of emotion in a championship game. Suddenly an official calls a penalty against him. The penalty could cost the team the championship they've been working at for years. Filled with anger, the player rushes toward the official in a rage. The perfect example of a crime of passion. Then what does he do? He stops inches in front of that official. The official raises his hand and points the player back to his position. The player obediently returns. Why? Because he knew that if he broke the rules and assaulted the official, he would be immediately ejected from the game, removed from his society, so to speak. He knows there are laws of the game. He knows that if you break those laws there is swift and certain punishment. He knows the odds are in the favor of the officials.

Unfortunately, in our society the odds are not in the favor of the officials. There must be changes so we can let criminals know the odds are now in our favor. Only then will the victims, the community, the police, and the businessmen not be discouraged.

Thank you very much.

Senator D'AMATO. John, thank you very much.

As Senator Marino said, that is a heck of an analogy. You really make the point very, very well.

[The prepared statement of Mr. Canfield follows:]

STATEMENT BY JOHN R. CANFIELD

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The bottom line is that the odds in favor of the criminal aren't bad. And don't think they don't know it. Many have been arrested before, beat the system and think it's easy.

My members are tired of criminals having all the odds in their favor. Police are discouraged by having to make life or death split second decisions in a dark alley on a rainy night only to be told years later in a Supreme Court decision that they were wrong. This by a panel of Judges who split their decision 5 to 4 not being able to agree among themselves and who were not even present that night experiencing the stress and pressures of the incident.

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STATEMENT OF JOSEPH TOUHEY, FIRST VICE PRESIDENT, POLICE CONFERENCE OF NEW YORK, NEW YORK, N.Y.

Mr. TOUHEY. Senators, I am Joseph Touhey, first vice president of the Police Conference of New York. I am here representing Peter Reilly, who was en route here but was called to an emergency meeting in Nassau County.

I would like to state that we will be submitting a prepared statement to you for the record with, we hope, some solutions, et cetera.[1]

Senator D'AMATO. That prepared statement will be included in the record following your oral presentation.

Mr. TOUHEY. I would like to make a couple statements.

I have been in law enforcement for 17 years. I have been a street cop for many years. I see what is going on.

I also see, and it has been stated here today, that we need more prisons. I would like to state one thing to this panel. I think we definitely do need more prisons. We have supported you in the past statewise for more prisons, but I have seen some of the new prisons that are being built. What scares me is that most of them are country clubs today. I think that prisons are prisons, and it is about time that maybe we should sit back and look at our prisons and what they are built for.

Thank you very much for allowing us to be here.

Senator D'AMATO. Thank you very much.

Senator Marino, do you have any question of any of our panelists?

Mr. MARINO. You are not referring to State prisons, are you, when you talk about country clubs?

Mr. TOUHEY. At the present time I can only name one, and that is a local prison in my county, where I am from, that is being built. They call it a jail. I look at it as a country club with an indoor gymnasium, et cetera. That worries me.

Mr. MARINO. Thank you very much.

Senator D'AMATO. I have no further questions.

I will make an observation for the record. Peter Kewhoe, representing the New York State Sheriffs' Association, is on his way. His plan has ben delayed.

We thank our final panelists, the fourth group of panelists, those who literally are on the battlefield and have been for so many years, for coming in and sharing their thoughts with us, so that our committee will have a full and complete, comprehensive record that we will make available to our committee members.

I would like, once again, to express my deep appreciation to District Attorney Sol Greenberg, whose staff has aided us in helping to put these hearings on; State Senator Ralph Marino and his committee. The Senator has many things to do. He has a very busy schedule. I don't have the kind of pressure he has on him right now. Therefore, for him to take his time—I am talking about the fact that he is running for office again—for him to take his time to come up here and be with us definitely demonstrates his commitment to attempting to deal with the problems of crime that plague our society.

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[1] Information not available at time of going to press.

I thank him and his staff for their professionalism, for their courtesy, for joining together. Hopefully, it demonstrates an effort on the Federal and State level, as we see with our district attorney and our U.S. attorneys coming together. This is the kind of coordinated effort we need, not only in fact finding and holding hearings but then in attempting to implement real programs to deal with this.

I want to thank Senator Marino, a good friend of mine, for his total cooperation.

There is a person who has been involved both as a former assistant U.S. attorney in the Southern District and as the Associate Deputy Attorney General for this Nation, Mr. Harris. I would like to thank him for giving his time, for committing resources and staff. I think people will begin to read the incredible kinds of progress he has been responsible for. He has played a major role, and I don't want to get him in real trouble by saying he has been responsible, but he has been a major catalyst in dealing with the criminal element, particularly the violent criminal. He has been a key factor in terms of moving the Justice Department and the administration to recognize the need for a greater commitment to this effort.

I want to thank you, Deputy Attorney General, or I should say Associate Deputy Attorney General because I don't want to get him in trouble by calling him Deputy Attorney General. If I call him Deputy Attorney General, Mr. Smultz will think he is taking his job. I want to thank him for being here and giving us his expertise as well as for continuing with this, because this is going to be an ongoing effort.

I want to thank my staff, John Zagame, as well as Bill Powers, who have helped and aided.

At this point in time I will say that the hearing comes to a conclusion. The hearing stands in adjournment.

[Whereupon, at 1:30 p.m., the hearing recessed, to reconvene at the call of the Chair.]

THE IMPACT OF CRIME ON SMALL BUSINESS

MONDAY, NOVEMBER 15, 1982

U.S. SENATE,
SUBCOMMITTEE ON URBAN AND
RURAL ECONOMIC DEVELOPMENT,
COMMITTEE ON SMALL BUSINESS,
San Francisco, Calif.

The subcommittee met, pursuant to recess, at 9:20 a.m., in the City Hall, San Francisco, Calif., Hon. Alfonse D'Amato (chairman of the subcommittee) presiding.

Present: Senator D'Amato.

Staff present: R. Michael Haynes, chief counsel; John Zagame, administrative assistant to Senator D'Amato; and Michael Hathaway, legislative assistant to Senator D'Amato.

Also present: Jeffrey Harris, Deputy Assistant Attorney General, U.S. Department of Justice.

Senator D'AMATO. Let us come to order.

STATEMENT OF HON. ALFONSE M. D'AMATO, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator D'AMATO. This is the third in a series of hearings being held by the Small Business Committee of the U.S. Senate. As chairman of the Subcommittee on Urban and Rural Economic Development, I am most interested in exploring the serious crime problem which plagues this Nation, with particular attention to its effects on small business.

Ours is a Nation of small business. Ninety-six percent of all businesses are small. Small business accounts for 43 percent of the gross national product and two-thirds of all new jobs. It is the incubator for new ideas, creative technologies, and broadened economic opportunities.

There is little doubt that crime has become one of the biggest threats to small business. In 1980, there were over 533,000 robberies nationally, as reported in the Uniform Crime Reports compiled by the U.S. Department of Justice. Of these robbery victims, more than 130,000 were businesses whose estimated total loss exceeded $100 million. And on top of these robberies, over 1,197,000 "nonresident" burglaries were also reported in 1980, costing another $858 million in estimated losses. There is little doubt that the outbreak of crime—robberies, burglaries, et cetera—adds up to a staggering total of nearly $1 billion lost by small business to robbers and burglars.

Despite the assurance in the Preamble to the Constitution that one of the first purposes of our Government is to "insure domestic tranquility," we are not blessed with peace.

Violence, and the fear of violence, grips our society. According to the Federal Bureau of Investigation, every 23 minutes someone in the United States is murdered; every 6 minutes a woman is raped; there is a robbery every 58 seconds, and a burglary takes place every 8 seconds. Just by the time this hearing is over, 12 more people will lie dead in their homes, in their businesses, or on our streets. Most will have been people who were bothering no one—cut down for perhaps only a few dollars—who just happened to be in the wrong place at the wrong time.

They are victims of the thugs who have made a business of crime, and who have made crime pay for themselves at a terrible cost to law-abiding citizens.

Crimes pays for these violent law breakers because less than half of them will ever be caught. Fewer than 5 in 100 will be convicted, and only 1 in 100 will be sent to jail. These are pretty favorable odds for someone looking to make an easy living at the expense of society.

The figures here in California speak for themselves. In 1982, out of 32,184 inmates of State prisons, 88.7 percent had a previous conviction and 41.4 percent had been previously incarcerated.

The average time served by a murderer in California is only 11 years. The average time a rapist will serve is less than 4 years. And for those imprisoned for robbery—almost half of the new prisoners committed in 1981—the average time served in prison will be 2 years and 5 months.

But it is not enough to simply recite the horrific statistics of crime. We must also realize that behind these numbers are victims whose lives were profoundly affected, and often shattered, by their personal encounter with crime.

Our first witnesses today are good, decent, law-abiding citizens who were victims of violent crime. I know it is difficult for them to recount their stories, but I believe theirs is the very testimony we need to put the terrible problem of crime in proper focus.

There is a growing awareness in America that the very fabric of our society is being torn apart by a crime wave that knows no bounds. It can hit any one of us at any time. The U.S. Congress has responded with passage of the Omnibus Victims Protection Act of 1982, to encourage greater consideration of the rights of victims of crime in Federal cases, and the U.S. Senate has passed the Violent Crime and Drug Enforcement Improvements Act of 1982, which awaits action in the House of Representatives. Among other changes, this bill contains much-needed improvements in our Federal laws governing bail. It would allow those charged with a Federal crime to be held for trial without bail where it is determined that their release would endanger society. In this way, criminals with a history of violent offenses could be kept off our streets. Similar legislation has been introduced in the New York legislature, and I am hopeful that it will be enacted into law here.

Such "preventive detention" measures have been suggested by two new studies prepared for the Department of Justice by the well-respected Rand Corp. as a means of dealing with the "omni felons" who comprise the career criminal element responsible for the majority of all violent crimes.

President Reagan's recent announcement that the administration will step up its battle against organized crime and drug trafficking is also welcome news. The President recognizes that additional resources will be needed to successfully combat crime, including new prisons to hold the additional criminals this nationwide dragnet will snare.

Here in California, as in New York, your own prisons are filled to the breaking point. If we are to see to it that those convicted of violent crimes are given the sentences they deserve, we must first acknowledge the need to build new prisons. And I believe Washington has an important role to play in assisting States to build needed prisons. In the 1970's the Law Enforcement Assistance Administration channeled hundreds of millions of dollars to States and localities to assist in their battle against crime. Now the Federal Government must not shirk from its responsibilities to help build the prisons necessary to separate the violent criminals among us from the rest of society.

While the primary duty for the administration of criminal justice rests with State and local governments, all levels of government have a duty to deal with the crime menace. Crime is not somebody else's problem. It's everybody's problem. It should be attacked from the local courthouse to the State house to the Houses of Congress.

We must undertake this concerted national effort because "domestic tranquility" means more than freedom from foreign invasion or domestic insurrection. It means safety in our communities and security for our businesses. In a word, it means peace for a society where the rule of law has been subverted by violent thugs and where freedom from fear is slipping further away from all of us.

And now I look forward to listening to and learning from the witnesses who have given of their time to be with us today.

I thank each and every one of the witnesses today, particularly the victims. Let me take this opportunity to thank each and every one of them individually and collectively.

Let me now call our first witness, Mr. Eugene Schmidt.

Mr. Schmidt, please give your name and address to the reporter.

STATEMENT OF EUGENE SCHMIDT

Mr. SCHMIDT. My name is Eugene Schmidt. I have had a small business for the past 18 years.

I was a victim three times in those 18 years. The first time my wife got shot and was killed in the store.

Senator D'AMATO. That took place while you were there?

Mr. SCHMIDT. Yes; I was at that time in the backroom on the phone. My wife proceeded to come back to take jewelry out of the safe to put it on display. She comes to the doorway and I hear the two shots, and she goes down.

The second time I got attacked by two men. They jumped the counter and came down with a .45 over my head. I ended up in the hospital. I lost about $120,000 in stock. I had a bad time trying to collect from the insurance. At the end of the whole deal I was minus about $60,000, and I am still paying for it.

The last incident, we had three people come into the store. They wanted to see some merchandise, and the next thing I face a 9 millimeter automatic. I had a good friend of mine, an off-duty police officer, in the store. I alarmed him, and there were lots of bullet holes all over the place.

Senator D'AMATO. I hear there was a real gunfight which took place.

Mr. SCHMIDT. Yes.

Senator D'AMATO. I believe your officer friend, who happened to be there, shot one of the criminals.

Mr. SCHMIDT. Yes.

Senator D'AMATO. Everybody calls them perpetrators; they are criminals. They shot at you. He was killed. Is that correct?

Mr. SCHMIDT. Yes.

Senator D'AMATO. Did he have a record?

Mr. SCHMIDT. He had a very, very bad one from what I understand, yes.

Senator D'AMATO. Isn't it a fact that he had something like 25 robberies for which he was wanted, robberies of banks?

Mr. SCHMIDT. In this area up here alone, yes. From what I understand, he escaped in 1979 in Trenton, N.J. He did bank jobs in Los Angeles. He had a very, very bad record, yes.

Senator D'AMATO. Mr. Schmidt, unfortunately, yours is a story that is occurring with too much frequency. To have one's loved-one shot down, one's wife, right before you has to take an incredible toll.

This committee thanks you for coming in to share your story with us, this tragedy.

I hope that these hearings will begin to jog the consciences of our legislative bodies, our Congress, and that we can, hopefully, move forward with the kind of legislation, preventive detention legislation, that would keep this person and others like him off the streets, because too many incidents take place involving repeat offenders.

Did they ever catch the man who shot your wife?

Mr. SCHMIDT. No, he was never apprehended.

Senator D'AMATO. That is the other tragedy, the fact that crime today does pay. We used to say, "Crime doesn't pay." I remember as a little boy growing up there was a radio program about crime not paying.

Mr. Harris, who is a Deputy Associate Attorney General, No. 2 in the Criminal Division, is here. Do you remember that program?

The fact is that crime does pay today. Only 1 out of 100 violent felons are ever apprehended, convicted, and spend any time in prison. It is shocking. It is incredible.

You are continuing to run your place of business?

Mr. SCHMIDT. Yes.

Senator D'AMATO. In spite of this incredible experience? Why?

There was a situation in New York. In that case the husband was killed. The wife said everything was gone and she left.

On the other hand, you refuse to give up?

Mr. SCHMIDT. I went through a time for 6 months after my wife was killed, and I don't know how to describe it. Every morning when I opened up the front door I thought I was going to go crazy. Finally, after 6 months I told myself I cannot keep going like this, but that is the only way I know how to make a living. It is my line of work. I enjoy it. I have very, very fine customers and good friends. They come. That is the reason I am still there.

The thing I cannot understand about the whole situation is in the last incident there were three people who came into the store, and the next thing I was facing a handgun.

As you said before, I am quite sure the men should have been in jail. They should not have been on the street. They had no business being on the street.

Senator D'AMATO. What about the proposal which I just made in terms of saying that if you commit a crime with a gun you should face life in prison?

Mr. SCHMIDT. Then, most likely, we would not have those incidents.

Senator D'AMATO. I understand that President Carter recognized this tragedy and that your wife received her citizenship posthumously from the President.

Mr. SCHMIDT. Yes. The two of us passed the test to become citizens. It normally takes about a month before you get sworn in. In the meantime she got shot down.

Senator D'AMATO. She was shot down while awaiting to become a citizen.

Mr. SCHMIDT. Yes.

Senator D'AMATO. Do you have a flashlight with you?

Mr. SCHMIDT. Yes.

In the last incident that man who shot at me and at my good friend—as a matter of fact, he is in the back of the room—and a 9-millimeter bullet went through the flashlight. That is why neither Ruby nor I got injured.

Senator D'AMATO. He shot about 15 bullets at you?

Mr. SCHMIDT. Seven bullets. That is what it will do [indicating flashlight]. If you get hit in the head, you are dead.

Senator D'AMATO. Your friend, the police officer, really saved your life that day?

Mr. SCHMIDT. Yes. Thank God he was with me.

Senator D'AMATO. Mr. Schmidt, I thank you, and I thank God that you are here to tell us your story.

Mr. SCHMIDT. Thank you very much, Senator.

Senator D'AMATO. I wish you success.

Mr. SCHMIDT. Thank you.

Senator D'AMATO. I will call our second witness, Lynn MacMeekin.

Let me thank you very much for being here.

STATEMENT OF LYNN MacMEEKIN

Mr. MACMEEKIN. It is my pleasure.

Senator D'AMATO. I made a comment before about the possibility for those who commit a felony with a gun that they face life imprisonment. What is your thought about this?

Mr. MacMeekin. I think that is perfect. I think that would save a small business and even individuals. I think that would be as good a deterrent as any.

Senator D'Amato. Is it your experience in life that if a person were faced with life imprisonment he would be less likely to use a handgun in the commission of a crime?

Mr. MacMeekin. I sure do.

Senator D'Amato. I take it your kind of views are the views of citizens who have to deal with the violence on the streets. We have to mobilize that opinion and galvanize it into some kind of concrete action.

Would you tell your story?

Mr. MacMeekin. Do you mind if I read?

Senator D'Amato. Of course not.

Mr. MacMeekin. At 6 o'clock on April 19, 1982, I finished my work. I went up to the office to put away the day's receipts and finish the bookwork. The door closes and locks automatically. In a little while there was a knock on the door and someone said it was an emergency. I opened the door to find a man that I did not know standing there. He pulled a gun, and perhaps I moved. He shot three times. One bullet entered my chest; one went through my left arm and entered my body under the arm. The last shot missed.

Police said an ambulance was called. I remember very little of the next 24 hours, and I know what happened only from what family, friends, and doctors told me.

I was taken to the trauma unit of the San Francisco General Hospital. I was rushed into surgery and was on the table over 7 hours.

One bullet had lodged in my chest and one had passed down across my body. One rib was broken; one lung collapsed. The spleen was nicked, and there was major damage to the liver. It was later explained to me that the last injury was the most dangerous. The liver apparently is made up almost entirely of blood vessels and, therefore, bleeding was intensive.

My veins collapsed because of extreme loss of pressure, and the surgeons had to cut down to the veins in order to give me a transfusion.

I was given 39 units of blood during the operation, 5 additional units during the time I was in ICU at General.

I was told that my heart stopped twice during surgery. The doctors opened my chest to do heart massage to keep me alive.

When I woke up the first thing I became aware of was the respiration machine. I was certain I was dying because everyone I had known who was on a machine such as that had died.

I had tubes down my throat so I could not speak or ask questions. There were about six or seven other tubes going in and out of my body, including one into my lower leg.

I remained in ICU at General for 2 weeks. I learned later that the doctors remained unsure of my recovery for the first week and a half. They kept telling my friends and family that I wasn't out of the woods, that there would be complications of blood incompatibility, infection in the liver, or pneumonia. By some miracle none of these things occurred, and at the end of the 2 weeks I was transferred to Kaiser to continue recuperation.

The bill for San Francisco General came to $33,000. I don't know what the bill for Kaiser was. My medical insurance paid those costs.

I came from the hospital on May 18, 1982. I was and have been in constant pain. I lost 50 pounds, could walk only a short distance, and was frightened to be by myself. This was because I was not sure that something terrible would not happen and I wouldn't be able to help myself. I had always been a very independent person, and the sense of helplessness and fear was very hard for me to deal with.

During this time there was a great drop in my business. Many of the people who had been steady customers were afraid to come into the bar. Many other customers came in because of me, and when I wasn't there stopped coming.

It is now halfway through November and I am unable to be back to work full time. I find actually working behind the bar is painful and I tire very easily.

This has meant that I have had to hire extra help. This combination of the drop in business plus the need to pay someone else to do my work is a continuing drain on my finances.

My inability to work has been a depressing effect inasmuch as I have always been able to stand on my own two feet and take care of myself.

This problem was further complicated when one of my employees, an ordained minister, began keeping a gun behind the bar. I was unaware of this reaction to my injury. He had trouble with a customer and pulled a gun. Two people from the ABC were there, and I am now threatened with a suspension of my license.

In addition to the weight loss I mentioned before, I suffered severe loss of hair. That seems to have stopped, but it concerned me a lot.

Since I have described the surgery, you can imagine I am tremendously scarred. Inasmuch as I have never spent time in a hospital before, this experience was very difficult for me.

I feel my vision has been affected. Also, I have been told that my veins may collapse and never return to normal because of the number of times they had to give me transfusions and tests.

Additionally, I have had to buy a hospital mattress for my bed because sleeping on the regular mattress was too painful.

I have developed severe mistrust of people, especially someone I don't know. I find when I go to work it is very difficult to stay to the end of my shift at 6 o'clock. When 5:30 rolls around I get extremely nervous and break out in a sweat, and I just want to get the hell out of the place.

Senator D'AMATO. Why is it at 5:30? I think this is interesting. At 5:30 every day you become agitated, break out into a sweat, and want to get out of there. Why?

Mr. MACMEEKIN. At 6:05 is when the crime took place and he tried to rob me. I just have recurring thoughts. It seems when I look at the clock and it is 5:30 my body just reacts.

Senator D'AMATO. When you get close to that time of 6 o'clock that happens?

Mr. MACMEEKIN. Yes, sir.

Senator D'AMATO. You feel a little apprehensive?

Mr. MacMeekin. Not a little, a whole bunch.

I have very little, if any, social life. I am simply too tired to do any more than go home and get into bed. I am fearful that I will never fully recover and I will never get back to normal. This worries and depresses me.

By the way, I forgot to mention that the robber's take from this was zero. He apparently was frightened and got absolutely nothing.

According to the police, this was his 41st robbery in the bay area.

Senator D'Amato. His 41st?

Mr. MacMeekin. His 41st, yes, sir. He has reportedly fled to New York.

This hasn't been my year. My car was recently stolen. The insurance settlement for the car has not yet been determined, and the car may be a total loss. It has not been my year.

Senator D'Amato. Let me thank you for coming in and with such great detail indicating the horror of your experience and the fact you are lucky to be alive, the trauma you suffered and continue to suffer—you, your family, and your loved ones. Unfortunately, this is a story we hear all too often. Maybe we do not hear it enough, but it is taking place; it is an untold story. It takes place all too often in this country.

Mr. MacMeekin. Senator, I thank you for what you are doing and anything you can do to help all of us will be great.

Senator D'Amato. Thank you for coming in.

Mr. MacMeekin. It is my pleasure, sir.

Senator D'Amato. The next witness will be Ellen Twitchell.

Ellen, please proceed.

STATEMENT OF ELLEN TWITCHELL

Ms. Twitchell. I worked at a restaurant corporation. I am the manager at a location here in San Francisco.

A year ago, August, among my duties I was required occasionally to open the restaurant. I had to be there sometime between 7 and 8 o'clock in the morning.

A weekend morning in August, I was there at about 7:30. Before any of the employees had gotten there, I thought I would get there and get my thoughts together and see what had happened the night before.

About 10 minutes after I had gotten there, the service bell rang at the service entrance. If you do not know where the bell is, you do not see it and it is not easily accessible. There is no way you can see who is at the back door. There was no peephole; there is now. The office is upstairs.

I went down and opened the door assuming it was an employee because they were due in by 8 o'clock. I opened the door and there was a black man there. I had never seen him before. He asked me for a job application.

I went on to explain that we take those on weekdays. Suddenly, he insisted that I open the door. I screamed and pulled the door toward me, with no luck. The second fellow, whom I couldn't see at that time, was behind the door and was holding it.

Somehow the first fellow got his fist through the door and hit me square in the mouth. I went up against the wall and down on the floor. I laid there half stunned, I guess.

They came in, looked around, and did not see anyone else—there was no one else in the building—and gave me a fairly good nudge in the ribs with his foot.

I got up and said, "I will open the safe for you." We went upstairs to the offices. About the third step up, he said, "Give me your ring." I had a diamond engagement ring on my hand that I had had about 2 weeks.

We went upstairs. I opened the safe. He tied me up with a cord from an adding machine.

Somewhere along the line, two employees had come into the building. The door luckily was not latched. One of the fellows went down and brought the two employees upstairs. He told us in no uncertain terms to lay on the floor. We did. They stole my car, used it as their getaway car, disappeared, and as far as I know, they have never been caught.

Recuperating was not easy. I have a great distrust, especially of strangers, as the gentleman before me said. It was difficult. For months, it was the only thing I thought about, especially before I went to sleep at night. I still constantly look over my shoulder. I am scared. I have not gotten over it yet.

Senator D'AMATO. Did they menace you with any weapons?

Ms. TWITCHELL. Yes, they both had guns.

Senator D'AMATO. They both had guns?

Ms. TWITCHELL. Yes.

Senator D'AMATO. What is your feeling toward what might be described as a rather radical suggestion I made, that is, that we should think about having a very severe penalty for use of the handgun in the commission of a crime, a sentence such as life imprisonment?

Ms. TWITCHELL. I do not think it is too radical if it helps to deter what happened to me and the other people here. I probably could support it.

Senator D'AMATO. I understand that your husband also is the manager of another store.

Ms. TWITCHELL. He used to work for the same corporation for which I currently work at an Oakland location.

About 2 months before I was robbed, he was robbed at gunpoint by two men. He was not hurt, luckily.

Senator D'AMATO. It is a terrible dehumanizing and humiliating experience.

Ms. TWITCHELL. Yes. Nothing like this had ever happened to me in my life before, and within less than 1 year, it happened to me twice. It hurt.

Senator D'AMATO. One of the tragedies seems to be that the courts here only hear one side, the problem with the defendant and his difficulties. All too often it seems to me they do not hear the story of the trauma we have heard already in three cases of those who are victimized and what takes place with them.

I thank you very much for coming in and giving us your testimony.

Ms. TWITCHELL. You are welcome. Thank you.

Senator D'AMATO. Thank you very much.

Mr. Clifford Catsoulis?

STATEMENT OF CLIFFORD CATSOULIS

Mr. CATSOULIS. I work for a bakery, a Parisian bakery. We had a bad experience there about 6 months ago. It was on a Wednesday at 2:30 in the afternoon. I was sitting at my desk. This fellow came in. He had a stocking over his face. I could not see his face. He did not have a handgun, Senator, but a sawed-off shotgun about this big [indicating a foot and a half].

He put it to my head and said, "Take me where the money is." I said, "I have none here. The money is in the safe in the main office."

He said, "Show it to me."

He took me from my office and walked me down the hall with the shotgun in my back. When we got there, I opened the safe. Naturally, there was no money in there because it was a Wednesday. Wednesday is a shutdown day.

He said, "There is nothing in here."

I said, "You came the wrong day. You are supposed to come any day but Wednesday. We do not work on Wednesday."

Well, he got quite upset. Incidentally, there were four——

Senator D'AMATO. I should say for the record your comment caused a chuckle, but the story is tragic. I am glad you had the good humor to tell him he came the wrong day—he should have come on any day but Wednesday.

That reminds me of the owner of a little Chinese hand laundry. He was held up about 12 times by the same fellows. This is in New York City. It seemed whenever the guy wanted money he came in regularly and just held him up.

Finally, he took matters into his own hands. He purchased a pistol. When he saw the fellow appear at the door he said, "Come in. Plenty money, plenty money."

He came in and the owner shot him. Of course, the owner had to go through a terrible time because he shot this fellow who had held him up about 12 times.

You reminded me of that, when he said, "Come in. Plenty money"—your story reminded me of his testimony when you said, "Come in any day but Wednesday."

Mr. CATSOULIS. I didn't try to be funny with him. I thought perhaps he would say, "Well, let's get out of here." However, he didn't take it that way. I found out because then he put the gun to my back again and he said, "If you don't tell me, I know there is money around here"— and by this time you are pretty nervous.

The other fellow said then, "We checked everything out. There is no money here. Why don't you lay them all on the floor and take their valuables?"

There were nine girls and myself in the office. So all the girls, he had them lying down on the floor, face down, including myself. He said, "The one who is the leader"—he did have a handgun.

Senator D'AMATO. He had nine people face down?

Mr. CATSOULIS. Down on the floor, yes. The one who was the leader, he had a handgun. He said, "All right. Take your valuables and let's get the hell out of here."

We went right down the line. The girls who had a necklace on, they ripped them off, took their earrings off. Those that had earrings on the inside, they didn't get those.

They went through their purses, dumped them on the floor and took the stuff out.

When he came to me, he put the gun to my head. I am laying down. He put the gun to my head. He said, "This is the last time I am going to tell you. Otherwise, I am going to waste you. Where is it?"

I said, "Believe me when I tell you that there isn't anything here. You think I will risk my life for a lousy couple of bucks?"

With that, he took the shotgun away from my head. I could feel the butt here. Help me. I expected to be hit right now. Well, it didn't happen. He took my wallet. He took my watch which was a retirement watch. He took a diamond ring, also a retirement ring. They put it all in the bag. Then they went down the line to take all the rest of the stuff from the girls.

When he came to my wedding ring he couldn't get it off. It was too tight. I got fat since we got married.

He was trying to pull it off. I thought the whole finger would come off. He said, "Don't waste time on it. It's not worth anything, anyway."

With that, the leader said, "Time's up. Let's go."

Just like the Army, they dropped whatever they were doing and just ran right out of the building. We all laid on the floor for a few minutes and then we got up to look out the window. By that time they were gone.

We called the police but it was too late.

The sad part of the story is not only the shock. We got no work out of anybody that day. As a matter of fact, for the next maybe almost a week we got no work out of girls. They were all shook up.

On top of that, there was nothing to cover the loss of their valuables. The company did not have insurance for it. Everybody that lost something, it was a total loss for them. That was quite an upset.

We heard the next day they picked up one of them because somebody knew the car or something. We were told that the man was staked out, you might say. Then they went up to the car and found a handgun in the glove compartment and some of the jewelry in the back seat of the car. We never heard any more about that.

Senator D'AMATO. That seems too often to be a problem, that the victims are never informed, oftentimes are not apprised of the success or failure of the criminal investigation or any court procedure which might take place or might have taken place.

Let me ask you about this bakery. This is a rather successful bakery, is it not? It is a large bakery?

Mr. CATSOULIS. Independent, yes.

Senator D'AMATO. It has been the subject of a number of robberies. I see here you have been robbed at least once a month for the past 3 or 4 years.

Mr. Catsoulis. Not in the bakery upstairs. There is a store downstairs where we sell bakery goods at reduced prices.

Senator D'Amato. Is that the place they robbed?.

Mr. Catsoulis. The story I just told you, they came upstairs to the office.

The other case you mentioned, yes. It averages about once a month that we get knocked over there. They come in the store. They make believe like they are going to purchase bakery goods. When they come to the counter the girl says she will ring it up. Then they pull the gun out of his waist or whatever and put the gun there. They say, "Give us all you got." The girls drain out the cash register, give it to them, and they are gone.

When that happens, every time this happens, if it happens at 10 o'clock in the morning, we have to close the store for the rest of the day because the girls are not able to work any more, so we lose not a whole day's work only but the time that the robbery happens these girls have to be excused to go home.

Senator D'Amato. If I were them, I would not even work there. I want to tell you something—this is incredible. This is like business as usual, on the average of once a month someone will come in and stick a gun in someone's face and say, "Give me your money." Forget those girls not working for the rest of the day. Those girls are incredibly brave to even stay there.

Mr. Catsoulis. Well, we have not had one, tap on wood, for almost a year.

You know the cameras like they have in banks?

Senator D'Amato. Yes.

Mr. Catsoulis. We have one right there where it is down on the common cash register. It has a red light on it. Since we put that up, we have had no problems.

We had one incident where he came in and he said to the girl—what we do, every 2 hours we take the money out of the register. This fellow came in and he flashed a silver-colored pistol and said, "Give me the money." We just emptied the cash register. There was about $15 in there. He got mad. He said, "You are hiding it. Give it to me."

She said that is all there is. He fired pointblank at her. She didn't know whether she had a bullet in her or not. She passed out on the floor.

We all thought she was shot. We called the ambulance and the police.

He used a starter gun. This is what he did. But that girl now, and that happened about 3 years ago, she has not been able to come back to work or work any more.

Senator D'Amato. Mr. Catsoulis, I want to thank you. You really put your finger on something. We have surrendered to the inevitability that you will be held up. Your people are prepared to be held up. They have almost given up. Many people conduct their business this way and make their lives this way. That is the tragedy.

Mr. Catsoulis. The tragedy is, Senator, that one of the burglars was apprehended. Do you know 2 months later the same guy was back?

Senator D'Amato. You are talking about one of the people who came up and held up the nine of you?

Mr. **Catsoulis**. No, in the store.

Senator D'**Amato**. One of the robbers. This was a robber. He was apprehended?

Mr. **Catsoulis**. Yes.

Senator D'**Amato**. Later he came back?

Mr. **Catsoulis**. Yes.

Senator D'**Amato**. The question is; how did he get back out on the street. To those who say, "Senator, don't you think pretrial detention or preventive detention is a terrible thing," I don't think it is. I think we need it. I think we need it desperately.

If a person is innocent, he or she is entitled to a speedy trial. The Constitution guarantees it. They should have that. I do not believe society should have a situation where we have repeat offenders and those people charged with crimes continue on this rampage of terror, particularly where they have long records in many cases and they are let out on bail.

I can give you examples in Washington, D.C., where a person with previous criminal conduct, violent criminal conduct, is let out on bail for $200 after being charged with murder.

Then he abuses a little 3-year-old girl to sell heroin. The people are outraged that he was using a little girl to help him distribute heroin. They should have been outraged that he was out on the street on $200 bail.

A rapist was out on the street with no bail. Then he goes after a witness, a case involving a little 8-year-old girl that he raped, was accused of raping. He goes after that witness.

He was released both times without bail. We find that taking place all too often.

Thank you very much.

Mr. **Catsoulis**. You asked what I thought about your proposal.

Senator D'**Amato**. What do you think about my proposal, that there will be a very serious penalty, such as life imprisonment, if you use a gun, and that includes a sawed-off shotgun or any kind of a gun, in the commission of a felony?

Mr. **Catsoulis**. Senator, I think that is the greatest thing I have ever heard. As a matter of fact, put me on record—I will be your campaign manager to put this thing over.

Senator D'**Amato**. In California? I will call upon you to be the spearhead for calling at least for a severe sentence for anyone who uses a weapon in the commission of a crime, whether it is a sawed-off shotgun or pistol.

Mr. **Catsoulis**. I will support it.

Senator D'**Amato**. We have two other witnesses who were victims, Bonnie Maler and Tom Malcamp.

Please come up together.

I thank you for coming here today and sharing your experiences with us and with this subcommittee.

STATEMENTS OF BONNIE MALER AND THOMAS MALCAMP

Ms. **Maler**. We work in a small store in what appears to be a safe neighborhood near the University of California. We have had the store for 5 years. In the past 5 years we have been robbed and assaulted three times.

I was at the store during one of the incidents. A man came in. I was suspicious of him and thought he was going to try to shoplift something. I went toward him to have him be aware that I was there and knew that I was watching him. I was there for several minutes. Then I turned to go back behind the counter. As I turned my back toward him, he grabbed me from behind and he strangled me and hit my head on the floor, dragging me toward the back of the store. Then he pulled a knife and held it at my throat.

He then took me into the back room and locked me in there. He took all the money from our cash register and also from my purse and he left.

Tom was at the store during the other two incidents.

Mr. MALCAMP. The last incident happened about 3 weeks ago. I was at the store alone that day. A man entered the store. It is a backpacking and camping store. He was asking about skiing equipment. I showed him the skiing equipment. He did not appear to be someone interested in skiing equipment.

He then asked to try on a shirt. I showed him the dressing room. He entered the dressing room. I was behind the counter at the time. After a short period of time he sprung out of the dressing room with his hand out to put over my mouth. I immediately began yelling for help in the hope someone would hear us.

I succeeded in pushing him away and running toward the door of the store and at the same time calling for help.

He had a partner he was working with. This man entered through the door and shut the door behind him, and they pulled out some sort of weapon. I think it was either a knife or an ice pick. I was stabbed in the back with it.

We landed on the floor. The two fellows were on top of me. They had their hands across my mouth to prevent my doing any more yelling. My face was then cut, not seriously.

At that point I gave up resistance and was taken into the back room and locked up in the back room while they robbed our business once again.

Senator D'AMATO. In both cases, it is sad to say, you almost have to be thankful that you were not assassinated. It could have been worse.

Mr. MALCAMP. It could very well.

I was taken to Mission Emergency Hospital. Fortunately, the wound was a very deep puncture wound but it struck a rib and did not enter into the area where the lungs are. I was very fortunate in that.

Senator D'AMATO. How has that affected you now in the operation of your business? Obviously, you cannot afford to close. You are limited in the ways you can protect yourself in your store. Has it affected your operation?

Mr. MALCAMP. We have changed some of the things we do, of course security measures in the store, making them more visible so people can look into the store more easily.

We also have put in a radio system so the business next door to us, should we feel someone suspicious is in the store, we can press a button and they can hear our conversation.

We are hopeful this may help us. However, at the same time, that is no guarantee that this won't happen again.

It is hard. It is hard for both of us. We are both very young, afraid to be in the store alone by ourselves now. As much as possible, although it is not always feasible, we try to be together in the store.

Ms. MALER. I have to say I am really terrified of being in my own business by myself. I feel the frequency with which it has happened to us, three times in 5 years, two in the past 5 months, it is just a matter of time before it happens again.

Senator D'AMATO. How many stores are there in this area? Are there a number of stores closeby?

Ms. MALER. We are at the very end of a fairly busy business district.

Senator D'AMATO. Is there any way to link up a number of these stores which are close together, such as you have with the speaker system with the adjoining store, and maybe let all of the people know that you have joined together in this protective organization, perhaps by putting a sign or something in the window?

Mr. MALCAMP. I see what you mean. In other words, notify the criminal.

Senator D'AMATO. Notify the criminal you are protected by way of joint communication.

Ms. MALER. We feel that things we have done are things that might help us out once we get into trouble again, but we would like to be able to see something that is more of a deterrent.

We have considered getting a security lock, but they are very expensive.

Mr. MALCAMP. The bottom line is that we feel we expect it will happen again.

Senator D'AMATO. This is a sad commentary on our response to the crime problem. Again, people have to live and work in this kind of pervasive atmosphere of fear. That is, you fear this will take place again, and you are helpless in the face of what is obviously a crime wave. Since little has been done to stop or curtail the crime wave, you will at some point in time be victimized once again.

I thank you. You really typify the small business person who is being victimized, whose rights are not being protected. While your rights are being infringed upon regularly, the tragedy is that the frequency of these occurrences merely becomes another statistic. It seems to me we had better, with all the foreign aid we send abroad, in some cases to petty dictators and what-not, we had better get some aid to Mr. and Mrs. John Q. Public here in this country. If we do not begin to stem the tide, we face more serious problems.

In my State, in the city of New York, there has been reference to crime prevention being emphasized during a period of time, generally before we run for election—"Crime is down 5 percent this year in comparison to last year."

However, I will give you an idea of the kind of criminal epidemic we have. In 20 years we went from about 15,000 violent felonies—violent velonies—committed just in the city of New York in 1960 to over 153,000 in 1980.

Therefore, when they say crime is down 0.7 of 1 percent, or 2 percent, it is a really meaningless statistic and it does not address the magnitude of the problem.

You will find that throughout this Nation, and I daresay if you look at the statistics in most of the urban and suburban centers across the country, you will find the same kind of phenomenon over a period of time.

Thank you for coming in and sharing your experience with us.

Mr. **MALCAMP.** Thank you.

Ms. **MALER.** Thank you.

Senator **D'AMATO.** I would like to thank our witnesses, the victims who comprise our first panel, and move on to our second list of witnesses: The deputy mayor of San Francisco, Mr. Rudy Nothenberg.

I would like to thank the city of San Francisco officials who are making this facility available. Thank you and the mayor for helping us to make it possible to conduct this hearing.

STATEMENT OF HON. RUDY NOTHENBERG, DEPUTY MAYOR, SAN FRANCISCO, CALIF.

Mr. **NOTHENBERG.** Thank you.

I am sorry the mayor cannot be with us. She wished us to extend the city's hospitality and greetings to you, which we are pleased to do.

This is a subject on which I know she would have preferred to testify herself. As you know, this is something in which she has a deep, abiding, personal interest in. She asked me to deliver some notes to you.

I might say at the outset that we thoroughly agree with what you have just said, that the statistics tend to hide the human cost of what is going on. We, like all other communities, are looking for assistance, and any assistance you can bring to us will be more than welcome.

Let me, then, go on to deliver the mayor's remarks. I think you have a copy of it.

Senator **D'AMATO.** Yes.

Mr. **NOTHENBERG.** I will not read it verbatim.

Senator **D'AMATO.** The remarks will be entered into the record as if read in their entirety.

Mr. **NOTHENBERG.** Thank you.

[The prepared statement of Mr. Nothenberg follows:]

REMARKS BY RUDY NOTHENBERG AT THE HEARING OF THE U.S. SENATE COMMITTEE ON SMALL BUSINESS

Thank you, Mr. Chairman and Committee members, for the opportunity to address you today on the problem of crime. Mayor Feinstein is out of the country on business but she wanted me to relay her views on this vitally important subject.

There is no higher priority for our city than combating violent crime. Despite the plunging national economy and the rising cost of providing professional police services, San Francisco has increased the number of sworn personnel in our Police Department by over 300 in the last two years -- more than any other city in the nation. With more officers on the street and a full complement of community crime prevention programs, crime has begun to drop.

Over the first ten months of 1982, the number of personal violent crimes is down 4.5% and overall crime 6% when compared to the same period last year. Except for larceny, we have experienced a reduction in all of the seven major felony offenses during this period.

My office has just completed a detailed study of Victims of Personal Crimes in San Francisco. This report indicates that approximately 70% of victims of assaults, rapes and robberies sustained physical injuries, with nearly 30% requiring hospital care. As devastating as those injuries are, our study shows that victims recover more completely from their injuries than from their emotional trauma. And, of course, fear of violent crime affects nearly everyone. For those who are most vulnerable -- the elderly, particularly -- fear of violence distorts their lives, robs them of their independence and keeps them prisoners in their homes.

The findings of the study present us with a better understanding of the victims, the offenders and the circumstances of personal crimes. This information will be utilized in a highly visible community education and outreach campaign by our Police Department so that our residents can take the necessary precautions to reduce their chances of becoming victimized. A copy of the report will be mailed to you as soon as they are available.

While we are seeing the overall successful results of our various crime-fighting activities, the problem of crime as it specifically relates to small businesses is on the increase.

During the first ten months of this year, there has been a 28.2% increase in the number of petty thefts in small businesses and a 12.8% increase in grand thefts. Furthermore, in this same period we have experienced a 32.6% increase in the number of robberies of gas stations, chain stores and other commerical businesses. Undoubtedly, the woeful state of the economy significantly contributes to this situation. Nonetheless, we must continue to nurture the relationship between our business community and law enforcement agencies to alleviate this problem.

The Community Services Division of our Police Department is working closely with our Chamber of Commerce, the large department stores and our neighborhood businesses in identifying and resolving the problems of theft, robberies, fraudulent checks and stolen credit cards. Crime prevention staff are active in educating the business community about security techniques. Perhaps more importantly, better lines of communication are being developed between the business sector and the Police so that the business community can be quickly appraised of newly evolving crime patterns.

Looking at the problem of crime from a more general perspective, I would offer several suggestions to the Committee regarding improvements in our criminal justice system.

I am convinced that the alarming proliferation of handguns in society -- there are an estimated 40 to 60 million handguns currently in the United States -- is largely responsible for the present level of violence in America. Approximately 23,000 people were killed by handguns last year in this country -- some by the accidental triggering of a supposedly unloaded weapon, some in the flash of anger in a family fight or, as is increasingly likely, in the firing by a cold blooded killer or a mental incompetent in the streets.

San Francisco recently adopted an ordinance banning handguns which I believe will help stem the toll of murder, assault and accidental shootings in our city. However, local and even State legislation in this area can only have a limited impact, and I strongly urge you to help generate national handgun control legislation.

Another area that merits greater attention is that of the habitual criminal. Statistics on violent crime in San Francisco reveal that a small percentage of arrestees are responsible for a large portion of cases processed through our criminal justice system. A local study revealed that in 86% of the felony cases prosecuted in San Francisco, the defendants had prior criminal records. Furthermore, 30% of these defendants were on parole at the time of arrest. The chronic violent offender must be dealt with in a fashion that is commensurate with the fear, injury and tragedy that they inflict on society. Extended mandatory sentences for repeat felons should be established.

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If there is a commitment to lengthen the prison terms for violent offenders, there must be a concurrent commitment to increase the number of beds in our already overburdened state correctional network. California voters did recently demonstrate their willingness to support expanded state prisons by passing the Prison Construction Bond Act of 1981. This act provides for a bond issue of $495 million to be used for the construction and renovation of state correctional facilities. The Department of Justice might assist California and other states in the expansion of correctional systems by identifying federal surplus land that could be utilized for prison sites.

I also support laws permitting pretrial detention of dangerous career criminals. In June of this year, California voted approval of Proposition 4 amending the California Constitution. Proposition 4 permits pretrial detention of felony defendants charged with acts of violence, when the facts are evident or the presumption great that there is a substantial likelihood that the defendant's release would result in great bodily harm to others. The criminal justice system needs to become more attentive to the needs of victims and the general public. Proposition 4 heps accomplish this aim by requiring the court to consider factors of public safety when setting bail for violent offenders.

The federal government has a certain role to play in the fight against violent crime. State and local funds finance most of the cost of this fight -- from law enforcement, courts, and prisons to victim assistance and crime prevention programs. There are, however, specific areas where federal dollars to prevent violence would save cities and states from paying vastly greater amounts in actually fighting violence when it occurs.

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**One example is the connection between violence and mental illness. Recent cutbacks in federal SSI and medicaid assistance have amounted to a shift of responsibility for part of this terribly difficult population from the federal government to state and local government. From our vantage point, they are being dumped at our doorstep without provision for food, shelter, clothing, or medical and psychiatric attention.

We are seeing increasing numbers of obviously disoriented individuals wandering our streets and being victimized. The demand on scarce, expensive empergency psychiatric hospital beds has never been greater. Our Sheriff reports that 20-25% of the jail population has been diagnosed as seriously mentally disturbed. Our courts report seeing even greater numbers of mentally ill defendants, with an increased proportion of them being charged with violent crimes.

**It is extremely cost inefficient to be unable to prevent mentally ill people from deteriorating to the crisis point. The violence that often results from the elimination of subsistence resources and the lack of professional attention is as tragic as it is avoidable. Increased federal support in SSI and Medicaid benefits would be an important step in reversing this direction.

Mr. Chairman, in the last few minutes I have offered some examples about what the federal government might do to assist us in our fight against crime. I hope that the testimony presented to you today will allow the Committee to develop a specific plan to help all of us in this critical endeavor.

Thank you for the opportunity to address you and I hope your stay in San Francisco is both enjoyable and productive.

CRIME IN SMALL BUSINESSES

	1981	1982	% of Change
GRAND THEFT			
	298	336	(+) 12.8%
ROBBERY			
Commercial Establishment	568	726	(+) 27.8%
Gas Stations	40	54	(+) 35%
Chain Stores	16	48	(+) 200%
TOTAL:	624	828	(+) 32.6%
Banks	914	880	(-) 3.7%
PETTY THEFT	2196	2816	(+) 28.2%

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SAN FRANCISCO
POLICE DEPARTMENT

INTRA-DEPARTMENTAL MEMORANDUM

DIST. B.B. DET. P&R(Crime Analysis)

DAY & DATE Monday Nov 1, 198

TO

Cornelius P. Murphy
Chief of Police

SUBJECT:

Major Crime Report

Sir:

Pursuant to your request, please find herein a status report on major crimes. This report shows the number of reported crimes for January 1st - October 31st, 1982 vs 1981. You will receive this report each Monday until further notice.

JANUARY 1st - OCTOBER 31st, 1982 vs 1981

OFFENSE	1982	1981	PERCENT CHANGE
Homicide	95	111	- 14.4%
Rape	510	567	- 10.1%
Robbery	5978	6248	- 4.3%
*Area A: Tenderloin	602	708	- 15.0%
*Area B: Western Additio	1092	1275	- 14.4%
*Area C: South of Market	376	473	- 20.5%
Aggravated Assault	3143	3262	- 3.6%
Burglary	11576	15172	- 23.7%
Larceny	30966	30078	+ 3.0%
*Pursesnatch	1504	1515	- 0.7%
Auto Theft	5228	5744	- 9.0%
TOTAL	57496	61182	- 6.0%

Respectfully Submitted:

FROM James H. Farrell

APPROVED BY:

REFER TO

RANK Sergeant STAR 410

RANK STAR

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Mr. Nothenberg. It is apt that you are in San Francisco. The mayor has made combatting violent crime and the question of crime itself not only one of but, in fact, the highest priority of her administration. As you may know, we have been successful, despite a very tough budget situation, in achieving a significant increase in the number of police officers we have on the streets. We have increased the size of our department by 300 in the last 2 years, and we have added to that a relatively good complement of community crime prevention services as well.

Consequently, crime has begun to drop. We just had an interchange on the meaning of statistics. However, statistics really are all we have. We count them—the reported crimes. While in total they are a good deal higher than they were, we do get some indication of trends by looking at statistics over a period of time. These trends are down in San Francisco compared to last year. We are down. Violent crimes are down 4.5 and crimes on a whole are down 6 percent.

We have a reduction in six of the seven classes of felony crimes in San Francisco. While it is scant comfort to those folks who are victimized; nevertheless, to the extent we can tell what is happening, we are down somewhat.

It may also interest you, inasmuch as you have been dealing with victims, that we have just completed a detailed study of victims of personal crimes in San Francisco. We are rather startled by the results. They are astounding.

We indicate that approximately 70 percent of the victims of assault sustain physical injuries, with about 30 percent requiring hospital care.

The young man who just testified said he was brought to Emergency Hospital. Fortunately, he did not have severe trauma, but he was injured. This happens in 70 percent of the cases. Thirty percent require hospitalization.

I think what was also indicated by the couple who testified here, and what the mayor points out next, is that in addition to the physical, there is an emotional trauma involved. This has a very high cost. It is a question of having to live in fear, whether it is an old person living in a house which he or she is afraid to leave or a business person in the Sunset, which is one of our safest neighborhoods theoretically, afraid of being in business. There is an emotional and psychological cost which is in many cases worse than, or at least as bad as, the economic loss sustained in a robbery.

A climate of fear is being created and we think it is in the interest of the Nation to bring it down. Presumably, that is why you are here and why we look to you to do something about it.

What we are going to do with the information about our victims is to try to come up with a community education program so we can improve the protection people and businesses have, so they are somewhat less vulnerable to the crimes to which they have fallen victim.

We have already done so with two projects which you will hear about. One is Project Safe, which is a neighborhood-based, community-based, now city-funded project where neighbors get together and try to protect their neighborhoods and properties. We have a senior escort service, about which you may also know. Again, it is a city-funded program of having seniors escorted to and from their places of shopping and banking by people who give them both the feeling of security and the fact of physical security which they need in order to traverse the city.

While our figures on crime are down generally, as you have heard now, our figures on small business crime are on the increase. We have some statistics which you have before you.

During the first 10 months of the year there has been a 28.2-percent increase in petty thefts in small businesses and a 12.8 percent in grand theft. We have experienced a 32.66-percent increase in the number of robberies of gas stations, chainstores, and other commercial businesses.

That is in the face of a drop in crime overall, which tends to indicate that there is a switch from the personal crime against individuals, burglaries, as against crimes against businesses.

Senator D'AMATO. I suggest to you that it is because small business is more vulnerable.

Mr. NOTHENBERG. Yes. I think the homeowners have begun to understand how to protect themselves. I think that same thing has to occur with small businesses. We are going to try to do that. We are working closely with the chamber of commerce, both the small business portion of the chamber of commerce and the large department stores, to try to do the kind of thing you suggested to the couple which was here, to try to find some way of making themselves less vulnerable. Whether that is by alarms, signs, whatever that is, we first have to be able to reach them. We have been able to do that relatively successfully with homeowners and individuals, but we have not done it as systematically as we should with businesses. I think that needs to happen.

I can digress for a moment and tell you that I believe the best protection we can get on the street is the beat cop. We are trying our very hardest to see that the maximum number of additional police officers we have get out on the streets, walking. We think a walking patrol officer is far more efficient and a far better deterrent than a guy in a cruiser. We will try to pull them out to the extent we can and get them back on the street. The mayor is absolutely insistent on that, and although the old canard is still that you never find an officer when you need one, the fact is there are more of them on the streets now than there have been in the past. You can wander the streets and see a couple beat cops. That is something we almost had lost entirely. That is coming back. We believe that effort, plus the educational effort, will have results.

The mayor asked me, inasmuch as you are here and because we have the opportunity to talk to you, to talk a little bit about crime in its general perspective. I think she would have found it hard to resist saying something about a matter she feels deeply about, the proliferation of handguns.

As you know, we have taken the lead in attempting to do something about controlling the alarming spread of handguns in the city and in the State. We have recently adopted a law banning handguns, which you may know about. We believe that that will reduce the number of accidental acts of violence and trauma and, hopefully, make the crimes on the streets a little less likely to occur.

We have some question now as to whether or not a local ordinance can be enacted or whether that is a State problem. You ultimately will have to deal with it.

We are very anxious to see some national attempt at handgun control, whether on importation or an outright ban, or whatever. You will have to deal with the politics of that, which you know better than I. However, it is something which we think is part of the crime problem and something we will have to deal with, whether we are dealing with crime against the home, the individual, or business. We believe that handguns are far too easily available and that they ought to be controlled.

We are also concerned about the habitual criminal. We have some figures here which may not surprise you but they surprised us. It is the national phenomenon which was written about in Newsweek a couple weeks ago. That is, that a very small number of criminals account for a very large number of the crimes which occur.

In our case 86 percent of the felony cases which were prosecuted have prior criminal records. I do not know whether it is higher than the national average or not, but it seems very high to us.

Furthermore, 30 percent of these defendants were paroled at the time of the arrest.

We are going to have to deal with that chronic offender problem in some way. There is a Newsweek article which speaks about better attempts at predictive indicia which would allow us to tell at the time of the parole hearing or at some early point whether or not there is a threat for repeat. We don't have very good indicia at this point.

One of the things—and I will address it again later—which is certainly a Federal responsibility is to fund the research which will allow us to come up with better predictive data. That is not a local problem but something that should be addressed nationally.

Senator D'AMATO. We find, unfortunately, that parole in many cases has become another word for early release due to overcrowding.

Mr. NOTHENBERG. Yes.

Senator D'AMATO. No one wants to admit it in State after State, but it is a fact.

Mr. NOTHENBERG. It is absolutely a fact. The very next point the mayor wanted me to address is precisely that.

If we are going to make a commitment to longer sentences or a different kind of parole indicia, we will have to make a commitment to expand the capacity of our jails.

The Federal Government has this problem, just as do localities and State. The State of California is more far-sighted in this problem. We are not doing as much as we should, I am sure. Nonetheless, we did pass a $100 million bond issue at the last election. We will be using that money for the construction and renovation of State correctional facilities. That will not be enough.

If there ever was a commitment to rehabilitation in our jails, whether at the Federal, State, or local level, that has been made a mockery of by the conditions we find in the jails. We cannot expect anything but the worst of results if we allow incarceration to continue in the conditions in which we now incarcerate people.

Therefore, if there is an area other than the research area, which I talked about, where the Federal Government has a role, it is in helping hard-pressed State and local governments to deal with capital needs, the needs of first construction, and then maintaining the jails which are vastly overcrowded everywhere you look.

The mayor wants you to know that she will support some law permitting pretrial detention of career criminals. Again, that depends, I think, on someone somehow coming up with better predictive indicia than we have.

As you may know, California approved a proposition which was an amendment to the California constitution. It allows pretrial detention of felony defendants charged with acts of violence where the facts are evident or the presumption is great that there is substantial chance to repeat. That is an area I mentioned several times now. We don't know how to do that predictive task as well as we should.

The mayor wanted me to point out to you her belief that the justice system as a whole needs to be better suited to the needs of the victims and general public. We have done some of that by having two constitutional amendments, one of which requires restitution and the other which requires that we consider the likely impact on the public when setting bail for violent offenders. Therefore, California is moving in that direction.

I mentioned a couple areas where we believe the Federal Government has a role to play. I mentioned the question of research. The late lamented LEAA did in fact do some considerable good in this city. We feel that the research programs, the demonstration grants, and the career criminal program, which is an LEAA grant, were good grants. We believe there should be some continuation of this kind of program.

We have another problem where I think we should point out to you. That is the connection between violence and mental illness.

We have a tremendous population of seriously and obviously disoriented individuals who wander our streets who find their way almost inevitably into the health and criminal justice systems, and usually both sequentially.

Our sheriff reports that 20 to 25 percent of the jail population has been diagnosed as seriously mentally disturbed. Courts report seeing a greater number of mentally ill defendants and an increased proportion of them being charged with violent crimes.

It is far better to treat these people as mental patients than to run them through both the criminal justice system and the health system.

We would request that Federal grants which supported the mental health system for many years and which have been declining, as you know, to a point of total disappearance these past few years—I was going to say that they should not further decline. They cannot very much further decline. That situation should, in fact, be reversed. We should see a new recognition of the connection between violent crime and mental illness. The effort being made to deal with crime should not be at the cost of a continuation of the support that the Federal Government provides or has provided in the past for treatment of mental disease.

Senator, I think I will close at that point. We have talked about some of the things we are doing in San Francisco and some of the things we would like to see happen at the Federal level.

In closing, I would like to say that the attempt to deal with the problem with which you are concerning yourselves is a matter of the most urgent and extreme importance to this mayor and to the mayors of every large and small city in this country. The climate of fear and unease which permeates the home and the business cannot be allowed to continue. It is not possible for the local government and the State government, all of which are encountering the same kind of financing problem that the Federal Government faces, to do it alone.

We are going to have to deal with this problem, and dealing with the problem, Senator, will not come for free. There will have to be a commitment of resources, and to say that you guys at the local level do it will be begging the problem. There will have to be a commitment of Federal resources in the face of a $100 billion deficit that you are facing for the next few years. I don't know where it will come from, but it is something that somebody is going to have to deal with.

Thank you very much.

Senator D'AMATO. Thank you very much.

The next witness is Mr. Quentin Kopp, supervisor of San Francisco City Hall.

STATEMENT OF QUENTIN KOPP, SUPERVISOR, CITY HALL, SAN FRANCISCO, CALIF.

Mr. KOPP. Good morning, Senator. It is nice to have you here in a room which has seen many kinds of meetings but none more important than this.

I am president of the San Francisco Board of Supervisors. I am also a friend of Warren Frank of the Central New York Transit Authority, who spoke to me of having come back from Washington with you a couple weeks ago.

I think you know where Syracuse, N.Y., is. That is where I was born and grew up.

Senator D'AMATO. So did Jeff Harris, who also attended Syracuse University, as I did. I spent 6 years there. Jeff spent 3 years there.

Mr. KOPP. I got out of town and went to Dartmouth.

Senator D'AMATO. We won't hold that against you.

Mr. KOPP. I hope you won't.

The reason I make that reference is not only because of your representation of the people of the State of New York, but because of the topic which I think you have come here to hear testimony and statements about.

My father operated a small drug store for about 35 years in Syracuse and in Solvay. I started working in that store when I was about 11½ years old. I continued to work in that store through college vacations and law school vacations. I finally got out of the business when I went into the Air Force.

This was a business that used to open about 10 in the morning and go until about 11 at night. I never wanted to be in that business because I thought my father worked too long, so I became a lawyer and found out that you can work just as long and just as hard.

However, I will tell you that I would not want to be in that business today for another reason. I would not want to be in any business that has to depend on its viability by staying open at night. I will tell you, I wouldn't want to be in the drug business today because it isn't safe during the daytime.

A gentleman who operated a drug store in this city for about 45 years died a couple years ago. His name was Charles Conlan. He is well known in and around city hall, at least by the oldtimers.

About 10 years ago, he began the practice of locking the front door to his drug store during all the hours that he was open. He didn't stay open after 7 o'clock.

To get into that store—right in the middle of the Sunset District west of Twin Peaks, a family, household-type of area of San Francisco, single-family homes—you had to press a buzzer and be allowed in. Why? Because he had been knocked over so many times that he was not going to take the chance.

One of the premier residential neighborhoods of San Francisco is where this was. He did not leave that front door open.

I listened with interest to the comments of the previous speaker, Mr. Nothenburg, who, I gathered, was speaking for the mayor. I was delighted to hear Mr. Nothenburg tell this subcommittee that California is moving in a direction of helping victims of crime. He was, of course, referring to the victims' bill of rights, which, Mr. Senator, was not legislation adopted by the California Legislature, as you know. It was instigated by the people of California who had to utilize countless hours and hours of their time and effort and energy to do what elected representatives in California refused to do, and that is adopt laws which protect victims.

California's state of the law in terms of the criminal justice system up until last June was in a sorry state, Mr. Senator. You are familiar with the rules of the U.S. Supreme Court with respect to the fourth amendment, questions of search and seizure, and the fifth amendment questions of self-incrimination.

The California Supreme Court, in the last 6 years, revised those rules by utilizing comparable provisions in the California constitution; in other words, using State grounds to an outrageous extent so that the self-incrimination rule was construed, for example, in the case of a young man over in the East Bay who had killed three members of his family, had been given his admonitions with respect to self-incrimination, entitlement to counsel, and all the rest of it, and a half hour into a recitation of the confession of the crime asked if he could telephone his grandmother, and when that request was refused, he continued to spill his guts. After a conviction of the trial court, the California Supreme Court said that when that young man asked to talk to his grandmother, he, in effect, was asking for counsel. That is the extent to which the California Supreme Court has gone.

Senator D'AMATO. I don't think this should be of any comfort to you, but the highest court in the State of New York, the court of appeals, has gone even beyond that kind of interpretation of the law which has made it totally impossible for effective law enforcement and has excluded the evidence which has come about in voluntary confessions after a person has been advised of his or her rights. In certain cases, the police do not issue warrants because there is now, as a result of a recent court decision, a rule of law which states that if you voluntarily make a confession after a warrant has been issued, that confession can also be vitiated. The issuance of the warrant is a presumption that you have counsel and cannot speak in the absence of that counsel. Therefore, the issuance of a warrant sets off this chain of events which concludes that even if someone said, "I want to confess to you that I have committed this crime," and you advised that person of his rights, you cannot use those statements. This decision by those scholarly people, in certain cases, who have now become the judges in the highest court of our State—incredibly thwarts the criminal justice system.

Mr. Kopp. I suggest you might want to touch base with Mr. Paul Gamm before you leave the State of California. Maybe you can give him a scholarship of some kind and bring him to New York State to show you how to get an initiative, although the rules for initiatives in California under the California constitution are much more conducive to the people doing this than they are in the State of New York. That is what the people had to do.

Senator, I don't want you to be fooled by some of what you have heard and will hear. Believe me, the political and legal establishment has fought these reforms in favor of victims every inch of the way. What is remarkable is that the victims' bill of rights, which was denominated as proposition 8 on the June 1982 California ballot, even in the most liberal-minded and voting city in the State—namely, San Francisco—even in San Francisco proposition 8 was the beneficiary of a majority vote by the voters of San Francisco. Why? Because people recognized that the system is out of whack, or that the system was out of whack.

It is not such a complicated set of provisions, incidentally, and rather than have them given to you piecemeal by people who opposed proposition 8 but who have now embraced it, evidently, if the last 5 minutes of the preceding speaker's testimony is an indication of what will follow—this provided for restitution in all cases, not just as a condition of probation where it is some kind of a white-collar crime or something of that nature, with a saving provision that a person in effect does not have money; then you cannot enforce the order.

However, it is also with enough language in there so that you can enforce that restitution requirement against somebody who commits a heinous crime, writes a book, and then garners thousands of dollars of profits from writing about a heinous crime.

Second, this changes the law with regard to admissibility of evidence so that the U.S. constitutional provisions on self-incrimination and the U.S. Supreme Court's interpretation of that law applies, and it indeed gives further factors for granting bail or not granting bail and not simply the likelihood of appearance at the trial but, as has been the case in the District of Columbia for about 8 or 9 years now, since 1973, it allows the magistrate, the judge, to take into consideration public safety as well as the accused's previous record as well as the nature of the offense with which the accused is charged with committing.

It also allows the use of a prior felony conviction which the California Supreme Court rewrote from common law that you can impeach with evidence of a prior felony. This restores the common law rule on using felonies to impeach. It abolishes the defense of diminished capacity, which I am sure you have read and heard about so much, particularly with its applications to San Francisco. It has an enhancement provision. Every prior felony conviction means an extra 5 years with respect to sentencing, whether that felony was committed in California or elsewhere.

It allows a victim to be heard before sentence in the trial court. You must notify the victim and give the victim a chance to be heard. If it is a homicide case, the next of kind must be notified. If the victim does not want to speak, the victim's attorney or counsel can speak.

It is the same thing at parole hearings. Before anybody is paroled, there must be notice and there must be that opportunity before the Board of Prison Terms of the State of California.

It limits plea bargaining. It does not abolish plea bargaining. Because there were so many untrue statements made about the victim's bill of rights, I emphasize that point. It does not abolish it, but it limits it to cases where a material witness is not available or where there is insufficient evidence, which, afterall, should be the ethical standard for any prosecutor in California or elsewhere. It also changes the law on people 18 years of age or older as far as commitment to youth authorities is concerned. You could commit up to the age of 21. This abolishes this if you are 18 years of age or older and you have been convicted of a serious felony within the definition of this.

I just want to close by saying a couple other things. The campaign against proposition 8 was instructive in terms of the problems of small business owners and people in general in California. As I say, the whole legal establishment—the State Bar of California, the president, the Bar Association of San Francisco and its president, who of course specializes in criminal defense law, most of the political establishment of California, and certainly San Francisco——

Senator D'AMATO. You certainly are not given to the art of understatement.

Mr. KOPP. I suppose that is one of my infirmities, Senator.

Senator D'AMATO. Or attributes.

Mr. KOPP. Thank you.

Senator D'AMATO. It may be a liability in politics.

Mr. KOPP. Yes.

I feel strongly about this whole sequence of events.

An effort was made to dismember it by telling the people that if this was adopted the criminal justice system would grind to a halt in operation in California.

Second, an effort was made to convince the people of California that if the victims' bill of rights were adopted the cost would be herculean. There was an estimate in San Francisco, for example, that it would cost something like $32 million in this 675,000 population city and county alone. You can multiply that by the rest of California with its other 57 counties.

You know what has happened? None of that. It is not true.

In San Francisco, for example, about 188 new cases were reviewed during the month of August 1982, 2 months after proposition 8 was adopted; 38-plus percent of the cases in superior court had been resolved in municipal court but were transmitted to the superior court just for sentencing.

Prior to that, only about 10 to 15 percent of new cases were resolved in municipal court; the rest would come on to superior court, hang on the calendar for 45 days or so until resolved, and then another 30 days or so after that for sentencing.

Therefore, it means there has been a spee[illegible]g up of the process, and it has also meant that there has been [illegible]igher disposition of cases immediately because those accused of [illegible]mes and their lawyers know that the victims' bill of rights [illegible]s provisions which mean something in terms of the risk they [illegible] by dawdling and by trifling with the criminal justice system, [illegible]ich they have been able to do.

It also created a consciousness on the part of the district attorney to resolve cases without unnecessarily putting people to the kind of time and effort and burden of going to superior court and the rest of the delays that are also part of the prosecutorial side of the criminal justice system.

The number of trials, to be sure, has increased, but the total amount of work has decreased because of a diminution in the number of items on the calendars in the superior court. The criminal justice system has been expedited and costs have not increased. The bill of rights has been in operation going on 5 months. You have not heard of any county in the State of California, any factually supported study, to show that all of these predictions that were designed to fool the people of California were accurate. They were not accurate.

I hope some of these provisions can be translated into Federal law—self-incrimination, search, and seizure.

You know, one of these days in this country, Senator, there will be a debate all over again about what the fourth amendment means. Why is it that we have to have a rule that punishes all of society for the transgression of one police officer, because that is what those cases do. Those cases allow a defendant to go free because of a failure to give self-incrimination admonition or because of some failure to follow rules in terms of searching an apartment or a house, even though the defendant is guilty.

There is a legal body of opinion, including a scholarly article written by the son of Justice Otto Kaus of the California Supreme Court, who lives in Washington. I have it available. It says that the penalty or the sanction for violation ought to be addressed to the individual who violates, not the rest of us.

In any event, I hope there will be some concomitant legislation that gives recognition to the victim who was a forgotten part of the criminal justice system in California but is no longer. I say thank God for that and thank God for the wisdom and the courage of people such as Paul Gann and so many other people, including some of the people you have heard before the public officials began testifying who put this proposition over last June.

Thank you very much.

Senator D'AMATO. Thank you very much, Mr. Supervisor. I appreciate your thoughtful presentation.

Mr. KOPP. Thank you.

Before we move on to our next panel, I will take a 5-minute break.

[Recess taken.]

Senator D'AMATO. We will come to order.

We will proceed with the next witness, Lt. Frank Jordan, San Francisco Police Department.

STATEMENT OF FRANK M. JORDAN, SAN FRANCISCO POLICE DEPARTMENT, SAN FRANCISCO, CALIF.

Mr. JORDAN. Thank you, Mr. Chairman and distinguished members of the committee.

I am Frank Jordan. I am charged with the responsibility of the Community Services Division of the San Francisco Police Department.

We are very pleased to have an opportunity to come before you to give you our concerns, particularly with regard to witnesses in the small business sector.

I will not allude to my written text, which has already been covered by previous speakers, particularly in terms of the crime statistics, both good and bad, here in San Francisco. I will, though, touch a little bit on the statistics coupled with the psychological factor here, meaning merchants do not have to be actual victims of crime to be affected by it. In reality, many people are quite afraid of crime, perhaps because friends, relatives, or neighbors have been crime victims or as a result of having read or seen media accounts of particularly vicious crimes.

A most important measure to be undertaken to assure expeditious administration of justice in cases involving defendants charged with violent felonies is the concept that swift, sure justice be established and maintained. Delays during the pretrial process are frustrating to both the victims and the witnesses, and I daresay in many cases to the district attorney's office.

Even after the trial is completed, a constant barrage of appeals to higher courts often takes place pursuing technicalities of law rather than the guilt or innocence of the party in question. Swift and sure justice have all too often become lost in a maze of appeals.

Dangerous career criminals should be closely monitored, as in the State of California, and heavier or extended sentences mandated under repeat offender provisions.

California's victims' bill of rights, which is proposition 8, which you heard Supervisor Kopp discuss a few moments ago, was passed by the voters early this year and is the example that I cite.

One of the provisions of this anticrime measure is that 5 extra years are added to a convicted person's sentence for each previous conviction, an attempt to keep career offenders off the streets.

Use a gun and go to jail, also mandates that are in effect in the State of California, are strong and positive, placing potential felons on notice regarding the use of a gun during the commission of a crime. That is a positive step in the right direction and should be evaluated as a model by other States not currently using such a law.

From the position of law enforcement, and without suggesting a simplistic answer to a very complex problem, I do offer what I hope to be some positive direction.

Encouraging trends are developing in San Francisco. What we are pursuing is crime prevention through community involvement. Community crime prevention in San Francisco is not a frill or a public relations hype without substance. It is a balanced approach which encourages all the citizens' active participation that it can possibly muster. The real deterrent to crime lies not with placing a police officer on every street corner, but in enlisting every citizen in that fight against crime. Police departments must learn the far most important tool is not a handgun, a night stick, or handcuffs. It is communication, the ability to communicate openly with the citizens we serve, including the business sector.

I do not downplay the importance of these tools when needed, but open lines of communication are most critical.

In all honesty, we must emphasize our limitations as well as our strong points. We cannot continue to be all things to all people, taking total responsibility for crime reduction or crime trends. We must continue to encourage every member of the community to do their part, to anticipate, to recognize, and to appraise crime risks and then to initiate some action to remove or to reduce them. To become more actively involved is really what it is all about.

Excellent citizens' programs operating in San Francisco at the present time, in cooperation with the police department's community service division, have been instrumental in accomplishing a citywide bond with merchants which continues to expand and flourish.

The first one is the San Francisco Chamber of Commerce Crime Prevention Committee. This provides important crime prevention services through pledges of funds and employees to staff the secret witness program, which is one example. Pledges of up to $25,000 a year are used for crimes in which we have problems where leads are now at a dead end or our leads have been exhausted, and there is information out in the general public and people are not willing to testify. We can get the information that would lead to the arrest, prosecution, and conviction of suspects. Funds can be provided and they do not have to testify. This has been extremely successful for the past 3 years in San Francisco.

Also, there is the donation of two crime prevention vans for the police department as portable classrooms providing merchants with timely information on neighborhood crime trends affecting the business community. Crime prevention officers are also using the vans to display portable hardware while conducting thousands of security surveys for San Francisco merchants. We think that also is a positive trend.

Another item is the San Francisco safety program which is now a citizens' safety program, partly nonprofit and partly funded through the city of San Francisco. It also has a business component. It works in cooperation with our police department to provide seminars, workshops, and employee training for all commercial establishments in San Francisco. Major emphasis has been placed on burglary and robbery prevention, shoplifting, fraudulent credit card programs, fraudulent checks, internal theft, and risk management through costeffective security measures.

We also have heard from a previous speaker about the senior escort outreach program, which again is a program where we are finding that senior citizens are being robbed of more than their property; they are being robbed of their independence to move around the streets. We feel it is important that, through a protective escort program, many now are finding safe corridors where we can work with the seniors and take them on shopping excursions, to different merchants 'establishments in San Francisco, to testify in court, to appear before the district attorney, to help each other and, in fact, help the police department and to help our city. We have found in the past 4 years that we have had over 200,000 protective escorts, and not once during the course of any protected escort have we had any kind of victimization. We think the record speaks for itself.

The bottom line is an organized, aware, involved business community that can reduce opportunities for criminal activity by planning ahead and doing their part before the crime is committed.

We often hear the term "police force" when identifying with law enforcement. We, in police service, are now beginning to use an equally important term, two equally important terms, when identifying with our environment in relation to crime prevention: The community force and, just as important, the business force. We feel that working together with cooperation among those three, we can make some positive inroads.

Thank you very much.

Senator D'AMATO. Thank you, Lieutenant.

I might ask you one or two brief questions.

Mr. JORDAN. Yes, Senator.

Senator D'AMATO. Have you or law enforcement officials attempted to target the career criminal?

Mr. JORDAN. Yes, we have. In San Francisco there is a career criminal program. We do—we look at where they are hitting in various parts of San Francisco, and we work very closely—and I am sure you will hear this from the district attorney who will be a speaker after me. I do know that we have been working with this program for approximately 3 years, and we find that tracking them has been effective and it has been thoroughly prosecuted in the district attorney's office.

Senator D'AMATO. In relationship to the old foot patrol, we have heard people call for a return to that, particularly in the business area. What is your feeling about that? Would there be a beneficial impact if we had a return to more foot patrolmen in small business shopping districts?

Mr. JORDAN. Yes. In San Francisco, we do agree that the foot patrol is important and it does have a place. However, the sheer economics is one of the drawbacks. We find that most merchants in a specific area where you have a variety of stores, particularly small shopping areas, do want that uniformed beat man to go into the stores, to get to know the merchants, to get to know the shoppers personally, to feel they have a better rapport and a better sense of community, and the beat officer can identify people who don't belong in that particular area.

What we are trying to do in order to compromise is to have two officers in a police car. When they are not actually patroling or reporting to a call for service, one of them gets out and walks the beat while the other one can be available to pick him up in a quick response to go to the scene of another problem. We see this as an important thing where we should continue that close liaison with the merchants out on the street. These men, beat men, are essential. We find the difficulty is the cost factor.

Senator D'AMATO. The economic factor?

Mr. JORDAN. The economic factor, yes.

Senator D'AMATO. There is no question that the foot patrolman in the old downtown neighborhood, the neighborhood of the small shops, would be an important ingredient in combating crime against small business?

Mr. JORDAN. Yes. We find it is a deterrent That uniformed physical presence is important. The merchants want it and the police department does see it as an effective way. The problem is the cost-effectiveness of the program is a difficult one.

Senator D'AMATO. I must suggest to you, not to be argumentative, that this business about costs is heard too often throughout the country. It seems to me we cannot afford not to engage in some of those programs that we say will cost money. Taxpayers are paying tens of billions of dollars in taxes for transportation, better health facilities, and recreation facilities, and it makes little sense to have such an infrastructure for which we pay taxes and which we are too afraid to use.

It makes little sense to have a wonderful transportation network, as we do in my State, and be afraid to use it. I share this thought with you. The subways of New York have provided incalculable benefits for city residents over the years. However, ridership is down to an all-time low. You have to go back 65 years, to find ridership, and the reason for this decline is because people are afraid to ride the subway system.

We are losing that valuable asset. We should be spending money so that we can enjoy the benefits of the infrastructure, the investment in those subways, the investment in sanitation, in street cleaning, in garbage disposal, et cetera—in other words, so we can provide the quality of life those facilities and services were intended to provide. All of these facilities and services make no difference if we cannot use them.

Mr. JORDAN. That is also very important to us. The radio cars, the officers who are now in roving patrols, we found that through some studies we lose that sense of identity with the community and the officers are "encapsulated in metal cacoons."

Senator D'AMATO. I agree. If the police unions were to read what I say, I am in great trouble politically, but I think we should get them out of those cacoons a little more, to get them back into the community. By the way, the community has changed radically. We understand that. There is not that sense of rapport. It must go two ways.

Thank you very much.

Mr. JORDAN. Thank you, Senator.

[The prepared statement of Mr. Jordan follows:]

STATEMENT OF LT. FRANK M. JORDAN, COMMANDING OFFICER, COMMUNITY SERVICES DIVISION, SAN FRANCISCO POLICE DEPARTMENT, SAN FRANCISCO, CALIF.

The City and County of San Francisco has been experiencing a positive trend in the reduction of Part I Crimes during the current year. Homicides, rapes, robberies, aggravated assaults, burglaries, and auto thefts are all down in relation to last years comparable statistics. Only one category larceny, is up showing an increase of 3 percent.

In relation to specific concerns of the business community, two areas of San Francisco's crime statistics have not been favorable. Larcency, up in all categories city wide, is escalating more rapidly in the commercial field as indicated by shoplifting crime statistics. Grand theft shoplifting (over $200) is up 12.8 percent, from 298 to 336. Petty theft shoplifting is up 28.2 percent, from 2,196 to 2,816.

Robbery though down 5 percent city wide, is up in the business community in 3 categories—Commercial Robbery is up 27.8 percent, from 568 to 726. Oil Station robberies have increased 35 percent, from 40 to 54, and chain store robberies have increased 200 percent, from 16 to 48.

These statistics coupled with the psychological factor of fear, meaning merchants do not have to be actual victims of crime to be affected by it. In reality, many people are quite afraid of crime, perhaps because friends, relatives, or neighbors have been crime victims or as a result of having read or seen media accounts of a particularly vicious crime.

A most important measure to be undertaken to assure expeditious administration of justice in cases involving defendants charged with violent felonies, is the concept that swift, sure justice be established and maintained. Delays during the pre-trial process are frustrating to both the victims and witnesses. Even after the trial is completed, a constant barrage of appeals to higher courts often takes place pursuing technicalities of law rather than guilt or innocence of the party in question. Swift and sure justice all too often becomes lost in a maze of appeals.

Dangerous career criminals should be closely monitored as in the State of California and heavier or extended sentences mandated under repeat offender provisions. California victims bill of rights, Proposition 8, passed by the voters earlier this year is the example I cite. One of the provisions of this anti-crime measures is that five extra years are added to a convicted persons sentence for each previous conviction—an attempt to keep career offenders off the street.

"Use a gun—Go to jail" mandates are also in effect in California. Placing potential felons on notice regarding the use of a gun during the commission of a crime is a positive step in the right direction and should be evaluated as a model by other states not currently using such a law.

From the position of law enforcement, and without suggesting a simplistic answer to a complex problem, I do offer what I hope to be some positive direction.

Encouraging trends are developing in San Francisco. What we are pursuing is crime prevention through community involvements. Community Crime Prevention in San Francisco is not a frill or a public relations hype without substance. It is a balanced approach which encourages all the citizens active participation it can muster.

The real deterrent to crime problems lies not with placing a police officer on every street corner, but in enlisting every citizen in the fight against crime.

Police Departments must learn that our must important tool is not a handgun, a nightstick, or handcuffs; it is communications. The ability to communicate openly with the citizens we serve including the business sector. I do not downplay the importance of these tools when needed, but open lines of communications are most critical. In all honesty, we must emphasize our limitations as well as our strong points. We cannot continue to be all things to all people taking total responsibility for crime reduction or crime trends. We must continue to encourage every member of the community to do their part; to anticipate, recognize and appraise crime risks and to initiate some action or remove or reduce them. To become more actively involved.

Excellend citizens programs operating in San Francisco in cooperation with the Police Department's Community Services Division have been instrumental in accomplishing a city wide bond with merchants which continues to expand and flourish.

(1) *San Francisco Chamber of Commerce Crime Prevention Committee:* Provides supportive crime prevention services through pledges and employees to staff a Secret Witness Program; donated two crime prevention vans to the Police Depart-

ment as portable classrooms providing merchants with timely information on neighborhood crime trends affecting the business community. Crime Prevention Officers are also using the vans to display portable hardware while conducting thousands of security surveys for San Francisco Merchants.

(2) *San Francisco Safe, Inc.:* The citizens safety program (Safety Awareness for Everyone) through its business component, in cooperation with the Police Department, provides seminars, workshops, and employee training for all commercial establishments in San Francisco. Major emphasis has been placed on burglary and robbery prevention, shoplifting fraudulent credit cards, checks, internal theft, and risk management through cost effective security measures.

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The bottom line is an organized, aware, involved business community that can reduce opportunities for criminal activity by planning ahead and doing their part before the crime is committed.

We often hear the term Police Force when identifying with law enforcement. We in police services are now beginning to use equally important terms when identifying with our environment in relation to crime prevention; the community force and the business force.

Senator D'AMATO. Our next witness is Mr. Reginald Pulley, the warden of San Quentin.

Mr. Pulley, thank you for being here and for having been so patient, also.

STATEMENT OF REGINALD L. PULLEY, WARDEN, SAN QUENTIN, CALIF.

Mr. PULLEY. I have given you a statement, but I would like to read part of it.

Senator D'AMATO. Certainly.

Since the determinate sentence law was passed in California in 1977, prison sentences have been lengthened dramatically. Also, in recent years, the rate of commitments has increased to the point where the department is experiencing a net growth of about 100 inmates per week. Our prison population is almost 34,000, although our institutions and reentry facilities have a designed capacity of only 27,000 inmates. By 1987 our population is projected to be almost 57,400 inmates.

In order to accommodate this growth, we are taking several short-term steps:

One. We are overcrowding the prisons beyond safe limits by double bunking both celled and dormitory institutions. This overcrowding has led to extensive litigation and an escalation in violent inmate behavior.

Two. The camp system is being expanded to accommodate all possible inmates who can be housed safely in a minimum security setting.

Three. Some modular housing is being erected at San Quentin and elsewhere for medium and minimum security inmates.

Four. We are rapidly expanding reentry facilities to house inmates in the community who are near the end of their sentences.

In spite of these short-term steps, the department will be out of beds by the spring of 1983, next year. We then propose to erect tent housing to accommodate the overflow population.

The major long-term proposal to alleviate overcrowding is the construction of six new prison complexes, plus limited expansion of present prisons. This construction would be partially funded by a bond issue of $495, which was passed in June. However, completion of the 14,000-bed project would also require additional appropriation of about $444 million from already overburdened State funds.

Even if money is available to implement this long-range plan, the department expects to be short over 15,700 beds by 1987.

Several population reduction proposals are seriously being examined:

First, prisoner intake might be reduced by placing a statutory ceiling on commitments.

Second, an early release law might be enacted to permit the release of nonviolent offenders up to 90 days prior to their statutory parole dates.

Third, a sentencing commission might be formed to set prison terms in order to manage overcrowding.

All of these proposals mean keeping convicted offenders in the community because of the lack of prison space.

If population reduction legislation is not passed, then two steps must be taken immediately in order to avoid an explosion in the prisons:

First, using inmate labor, prisons must become more self-supporting.

Second, new funding sources must be developed for prison construction and prison industries capital expansion.

California has already begun a program to make the system more self-supporting. The new work time law will permit inmates to earn 1 day off their sentence for each day of full-time work. This work time law provides a strong incentive for prison inmates to work.

We plan to have 26,000 full-time inmate jobs by January 1, 1983. However, under present economic and legal constraints, it is likely that many of these jobs will be menial tasks involving prison maintenance and the production of agricultural commodities for consumption by prisoners.

There are many creative ideas for using the labor of our large inmate work force. We are establishing pilot projects in computer key data entry, computer programing, and micrographics. For example, at San Quentin we provide complex computer programing services for public agencies at a cost of $4 an hour. These same services would cost over $30 an hour if performed by private contractors. The cost savings to taxpayers are clear.

There are plans to have prison inmates make the hardware, furniture, clothing, and equipment needed to operate the new prisons. We are also considering inviting small businesses to come in and set up industries within our walls. These will be self-supporting, cost-saving services for public agencies.

California prisons can be more productive and reduce costs to the taxpayer. However, new industries cannot begin or become self-supporting without initial capital expansion funds to buy equipment, set up factories, and hire technically trained staff. Money for this expansion of prison industries is not available in the State budget. The Federal Government must develop a means to provide financial support to States, such as California, for the payment of the capital costs of new prison construction and prison industry expansion. Otherwise, the prison population will have to be reduced through early releases or changes in the sentencing laws.

I support current efforts to remove dangerous offenders from the streets and send them to prison. However, please remember that prison inmates on an average will return to our community after about 2½ years of confinement. We must teach these inmates, our neighbors, new skills which they can use inside the prison so that tax dollars can be saved. They must also have these same skills so that when they parole they can go to work for a small business, rather than committing crimes against small business.

These skills cannot be developed and prison industries cannot be productive in aging, overcrowded, unsafe, and poorly equipped institutions. The prison must be a modern, safe, and properly equipped place for a prisoner to live and work.

I am asking that you support our efforts to construct prison housing and self-supporting industries. We can then develop a productive and cost-saving prison work force to serve the taxpayers and the business community.

Senator D'AMATO. Thank you very much, Warden.

I would be interested in getting your assessment as to the kind of prison population you have at San Quentin. First of all, how many prisoners do you now house there, approximately?

Mr. PULLEY. This morning I have in excess of 3,200 inmates.

Senator D'AMATO. 3,200. It is one of our Nation's largest?

Mr. PULLEY. Yes.

Senator D'AMATO. Of the 3,200, what percentage would you estimate are nonviolent criminals who might better be housed in a different program or facility? Yours is a high security facility?

Mr. PULLEY. Maximum security. We do have the most violent offender, or that offender who cannot behave himself. He would be a management problem in other institutions. He has been moved to San Quentin.

However, there is a population there of about 25 percent who do not belong in San Quentin. They belong at some other prison with less security but more kinds of alternatives and programs to his lifestyle wherein he could earn or learn to develop a skill in some other institution.

Senator D'AMATO. For example, even if he were successful in making an escape, he would not be a violent danger to the community at large? Is that the kind of prisoner population we are talking about? I am talking about that 25 percent.

Mr. PULLEY. Yes.

Senator D'AMATO. It would seem we are faced with this critical shortage of maximum security facilities, and we should make a very special effort to identify the nonviolent inmate and then also make available additional facilities to house that portion of the population so that the space they are taking in maximum security facilities then is made available for the violent offenders.

Mr. PULLEY. I agree. Yes, we should do that.

Senator D'AMATO. Do you think we are doing enough in that area?

Mr. PULLEY. No, we are not.

Senator D'AMATO. I thank you for your candor and your frankness, because this committee is concerned with being able to make recommendations which, hopefully, can be put into action in order that we might help the system. As you point out, as incarcerations and the length of sentences increases, it becomes a very real problem for those who manage the prisons.

Mr. PULLEY. Absolutely.

Senator D'AMATO. Has parole been too liberal? That is a loaded question, I know.

Mr. PULLEY. Yes, it is. That is my background. I came from paroles.

On occasion, yes, we have been too liberal. I think, though——

Senator D'AMATO. Has it been used too liberally? That really would be the more proper question.

Mr. PULLEY. No, I don't think it has. I don't think so. I think we should use it more, but we should put some constraints and pay attention. In other words, we should demand, if we are going to put money into that part of the system, we should demand from paroles more than we are demanding. I think that is the whole essence of the problem and the situation. We in corrections are at the end of the system. However, if you give us the funds, there ought to be some criteria which we have to meet; there should be some level of expectation.

I think that has not been demanded of paroles. They see it as, "Well, we only have 14,000 people on parole compared to 30,000 in prison." However, I think that 14,000 ought to be given as much supervision, aid, or assistance as we are going to give those inmates who are in the prison system. On occasion we have not done that. We have looked at caseloads and ended up counting people rather than what source or the what extent of supervision does this man really need. That has not happened.

Senator D'AMATO. Interestingly, we find, whether it be in New York City or in the upstate communities of Albany, Buffalo, or in San Francisco, that a disproportionate number of crimes are being committed by those who have been released, either on parole or as a result of a shortened time from their sentence.

We heard testimony this morning, and I believe you were here, that indicated that 30 percent of the crime that has been committed in the San Francisco area has been attributed to defendants who are on parole at the time of their arrest.

By the way, those figures are not unique or indigenous to San Francisco alone. They are the kinds of figures that you will find throughout the country.

Therefore, the question comes up again: Are we being expedient, as a result of the incredible growth in prison population, the lack of facilities, in adopting policy, maybe by way of necessity, given the shortage of prison space, which puts back out into the society those who really are not ready to assume a role in the society and who should not be back out on the streets?

Mr. PULLEY. That may be true in part. I believe it is so. However, there are not enough resources for that parole agent or for that parole division to give that parolee the kinds of assistance that he needs.

Senator D'AMATO. Do you mean job opportunities?

Mr. PULLEY. Job opportunities, a place to stay, halfway houses, those kinds of things. People tend to say, "Put them some place else." The parole agent becomes frustrated. In fact, there are some indications that this man is in trouble, but what do you do? The regulations say you cannot lock him up. We need another place. We need some vehicle put into effect that gives us the authority to be more restrictive, more helpful. That kind of approach is not existent at present.

Senator D'AMATO. What you are saying is that the parolee really should not be paroled unless there are various services?

Mr. PULLEY. Some alternatives set in place which he has to go through. In other words, he will indicate or demonstrate some ability to make it on the street. Just to put him out of San Quentin—we have people going out on parole from San Quentin who have had no previous preparation other than knowing that his parole agent is in San Francisco, and he goes there. He is not prepared. There has been nothing put into place. The system has not demanded that we put something in place for that parolee to go through these kinds of steps if he is going to make it on parole.

Senator D'AMATO. It has been an expedient, really, the way it has been operated?

Mr. PULLEY. That is correct.

Senator D'AMATO. Warden Pulley, I want to thank you for your thoughtful presentation.

I also would make note that this is the first time at any of these hearings that someone has come forth and indicated that in terms of support for the actual running of the prison we must look toward the inmates and give them some reward in addition for their participation to help lighten the financial responsibilities for the maintenance and operation of that facility.

Mr. PULLEY. Yes, Senator. I would like to add to that. We also have John Doe Citizen working at that prison, some 1,030 people working at San Quentin taking care of the people that the citizen says to lock up.

If you do not put the funds there, what are you telling that citizen who is an employee of mine about the system? Do you want it to work? Therefore, you are going to have to do something.

If you have a good, modern facility and workplace for my employees, then you can demand that something happen through the system because you are giving them the tools. That has to be.

Senator D'AMATO. Thank you very much for sharing your thoughts with us.

Mr. PULLEY. Thank you.

[The prepared statement of Mr. Pulley follows:]

STATEMENT BY
R. L. PULLEY, WARDEN
SAN QUENTIN STATE PRISON
BEFORE SUBCOMMITTEE ON URBAN AND RURAL ECONOMIC DEVELOPMENT
SENATE SMALL BUSINESS COMMITTEE
MONDAY, NOVEMBER 15, 1982

SENATOR D'AMATO
SENATOR HAYAKAWA:

Thank you for this opportunity to comment on the effect of longer prison terms on the management of State prisons. Also, I will discuss some of the ideas that we are reviewing in California to alleviate prison overcrowding.

Since the Determinate Sentence Law was passed in California in 1977, prison sentences have been lengthened dramatically. Also, in recent years, the rate of committments has increased to the point where the Department is experiencing a net growth of about 100 inmates per week. Our prison population is almost 34,000, although our institutions and re-entry facilities have a designed capacity of only 27,000 inmates. By 1987 our population is projected to be almost 57,400 inmates.

In order to accommodate this growth, we are taking several short term steps:

1. We are overcrowding the prisons beyond safe limits by double bunking both celled and dormitory institutions. This overcrowding has led to extensive litigation and an escalation in violent inmate behavior.
2. The camp system is being expanded to accommodate all possible inmates who can be housed safely in a minimum security setting.
3. Some modular housing is being erected at San Quentin and elsewhere for medium and minimum security inmates.

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4. We are rapidly expanding re-entry facilities to house inmates in the community who are near the end of their sentences.

In spite of these short term steps, the Department will be out of beds by the Spring of 1983. We then propose to erect tent housing to accommodate the overflow population.

The major long term proposal to alleviate overcrowding is the construction of six new prison complexes, plus limited expansion of present prisons. This construction would be partially funded by a bond issue of 495 million dollars. However, completion of the 14,000 bed project would also require appropriation of about 444 million dollars from already overburdened State funds.

Even if money is available to implement this long range plan, the Department expects to be short over 15,700 beds by 1987.

Several population reduction proposals are seriously being examined:

1. Prisoner intake might be reduced by placing a statuatory ceiling on committments.
2. An early release law might be enacted to permit the release of non-violent offenders up to 90 days prior to their statuatory parole dates.
3. A sentencing commission might be formed to set prison terms in order to manage overcrowding.

All of these proposals mean keeping convicted offenders in the community because of the lack of prison space.

If population reduction legislation is not passed, then two steps must be taken immediately in order to avoid an explosion in the prisons:

1. Using inmate labor, prisons must become more self supporting.

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2. New funding sources must be developed for prison construction and prison industries capital expansion.

California has already begun a program to make the system more self-supporting. The new Worktime law will permit inmates to earn one day off their sentence for each day of full time work. This Worktime law provides a strong incentive for prison inmates to work.

We plan to have 26,000 full time inmate jobs available by January 1, 1983. However, under present economic and legal constraints, it is likely that many of these jobs will be menial tasks, involving prison maintenance and the production of agricultural commodities for consumption by prisoners.

There are many creative ideas for using the labor of our large inmate work force. We are establishing pilot projects in computer key data entry, computer programming, and micrographics. For example, at San Quentin we provide complex computer programming services for public agencies at a cost of $4 an hour. These same services would cost over $30 an hour if performed by private contractors. The cost savings to taxpayers is clear.

There are plans to have prison inmates make the hardware, furniture, clothing, and equipment needed to operate the new prisons. We are also considering inviting small businesses to come in and set up industries within our walls. These will be self-supporting, cost saving services for public agencies.

California prisons can be more productive and reduce costs to the taxpayer. However, new industries cannot begin or become self-supporting without initial capital expansion funds to buy equipment, set up factories, and hire technically trained staff. Money for this expansion of prison industries is not available in the State budget. The Federal government must develop a means to provide financial support to states, such as California, for the payment of the capital costs of new prison construction and prison industry expansion. Otherwise, the prison population will have to be reduced through early releases or changes in the sentencing laws.

I support current efforts to remove dangerous offenders from the streets and send them to prison. However, please remember that prison inmates, on an average, will return to our community after about 2½ years of confinement. We must teach these inmates, our neighbors, skills which they can use inside the prison so that tax dollars can be saved. They must also have these same skills so that when they parole, they can go to work for a small business, rather than committing crimes against small business.

These skills cannot be developed, and prison industries cannot be productive in aging overcrowded, unsafe and poorly equipped institutions. The prison must be a modern, safe and properly equipped place for a prisoner to live and work.

I am asking that you support our effort to construct prison housing and self-supporting industries. We can then develop a productive and cost-saving prison work force to serve the taxpayers and the business community.

Senator D'AMATO. Our next witness is the district attorney of San Francisco, Mr. Arlo Smith.

STATEMENT OF ARLO SMITH, DISTRICT ATTORNEY OF SAN FRANCISCO, SAN FRANCISCO, CALIF.

Mr. SMITH. Thank you very much, Mr. Chairman.

Unfortunately, crime pervades all levels of our society. There is no question about it. It affects both the homeowner and the shopkeeper.

There is only one way that with certainty we are going to make some inroads into this problem. Crime is a complex issue. Everybody says that. There is no simplistic solution, but there is one thing for certain, and that is that swift apprehension, swift prosecution, and certainty of arrest and prosecution and incarceration have a very definite and positive effect on reducing crime.

Criminals are not going to stop selling dope and they are not going to stop committing robberies or burglaries for money unless we are willing to fund that system.

The people in California, as Supervisor Kopp has said, have spoken very clearly on this issue. The elections in California provide a voice to the people. We usually have 12 to 20 propositions every time on our statewide ballots. They have spoken very clearly saying that crime is one of their highest priorities.

State law again provides for detention and better bail procedures. It now again allows truth in evidence, which you heard about before.

Not getting into all the complications of it, we just had a 1-day seminar with 500 prosecutors here in San Francisco from around the State. It was held in conjunction with the California DA's Association.

I would like our legislators and the public to understand that they gave up a national holiday to come and listen 1 full day to the rules of evidence which have been changed in California as a result of proposition 8.

The principal purpose of that measure in terms of evidence is very simple. It was to require the California appellate courts and trial courts to follow the U.S. Supreme Court in its decisions and not to wander off into its own course, to its own deviations from what the U.S. Constitution requires, without getting into the issue of independent State grounds and without having their own little tricks added into the rules of evidence based upon the California constitution.

State law also now provides for longer jail sentences, both through "have a gun; go to prison" and through increased penalties for those who have committed crimes before.

As to the recidivists, we had an example of that Friday. We had a burglary case tried. Normally, he would have gotten 2, 3, or 4 years. Before proposition 8 you could only charge priors. There was a cutoff time. Also, we had to show the individual was actually sent to State prison as opposed to being placed on probation for robbery or burglary.

Now it also has been enhanced to 5 years. As a result of that measure, that individual received 10 additional years in State prison. He was a career criminal, looking at the record, very clearly.

The message from the people in California is very clear. They want California to be free from crime, not a haven for criminals but to remain a safe environment for them and for the small businessmen and every other person in California.

However, the most critical question, I believe, is the one you alluded to earlier; that is, now that the people have spoken, will the elected officials fund law enforcement sufficiently to make the difference? There is no easy way out. It costs money to put police officers on the streets, to investigate crimes, and prosecute crimes. There is no easy way out. You cannot simply put police officers on the street and make more arrests without funding the rest of the system—the prosecutor, and without the prosecutor, literally they put him in the back door of the hall of justice and he walks out the front door.

Without additional courts, without additional probation officers, and without additional jail facilities, there is a problem. The people of California have spoken very clearly about jails and prison facilities.

In June of this year they passed a bond issue to fund State prisons. Just 2 weeks ago they passed a bond issue to assist in the funding of county jails. The people have clearly spoken on this issue in California.

It so happens that in San Francisco we have the most underfunded district attorney's office in the Bay Area, and probably in the State, in any way you want to measure it—in terms of numbers of prosecutors to police, in terms of number of felony cases. You name it.

However, the fact is that in San Francisco I am very proud of what has been occurring in the past few years. In the past 3 years, commencing in 1980, there was a drop of 1 percent in the crime rate, as measured by the FBI index, while the rest of the State and the Nation continued with an increase of approximately 10 percent.

In 1981 it dropped 2.5 percent. Well, it was rising or leveling off around the country.

This year, in the first 6 months, it has dropped nearly 7 percent, for a total drop of approximately 11 percent. That does not mean we are winning the battle, but it means we are making some headway.

In addition, in San Francisco in 1979, as indicated by the Warden of San Quentin, San Francisco committed approximately 700 persons, new commitments into the State prison system. In the fiscal year 1981-82 we committed 1,050, a 50-percent increase in the number of commitments to State prisons. In fact, the commitment rate in San Francisco is the highest in the State when measured in terms of population.

However, in addition to that, an interesting fact is that even though the crime rate has gone down, the commitment rate to State prisons has gone up. Also, significantly, the arrest rate in San Francisco has gone up dramatically, about 25 percent in 1980 and roughly 15 percent for the following 2 years.

I believe that the arrest and prosecution attests to the effectiveness of prosecution, arrests and prosecution, and that it is having a positive effect on the crime rate.

A lot of people attribute it to many, many factors. Frankly, I think that in San Francisco the fact is that the city put another 250 to 300 police officers on the street, commencing in 1980. That brought us more cases and more arrests even though the crime rate was going down.

The fact of the matter is that we have been prosecuting more vigorously and committing more people. Also, I believe one of the chief factors is that some of those badly treated programs, such as the LEAA, there has been a lot of adverse publicity concerning that but there is no question in my mind—and I am not talking about the money which might have been spent on projects which led us no place——

Senator D'AMATO. Wasted.

Mr. SMITH. Yes, wasted. However, there are some very sound things that came from that. One of them has been having a very definite effect on the crime rate. That is the career criminal program which we have in San Francisco. We have it in other counties around this State.

Studies indicate that those individuals commit 35 to 50 robberies and burglaries on the average. If we put 1,000 of those individuals into State prisons for a longer period of time, we have 35,000 to 50,000 fewer robberies and burglaries in California. I believe that is having a definite impact.

I think those programs do need additional funding, but it cannot be left to the county level. In the State of California we do get partial funding from the State on a permanent basis, or a semi-permanent basis. At least, it purportedly is going to be added to the budget every year. That does sustain that kind of program.

Another program which I believe has been significant at reducing crime is that alluded to by Lieutenant Jordan. That is the Project Safe or Project Watch, which gets the citizens involed in the apprehension and prosecution of crime.

There is no question that we cannot meet the crime problem by putting a police officer on every corner and a prosecutor in the back of every paddy wagon. We must have the cooperation of the public. That program has been very effective.

For example, out at Clement Street, which is a small business shopping area, we have apartments and small shopkeepers. They work as a unit to look after each other. Citizens out there become involved not only as to residents but to notify the police about burglaries and other suspicious conduct involving the small business person. I think that program has made cities more livable by getting people to know each other better in their neighborhoods, and it has reduced crime by having those citizens alert for each other and for their businesses and anyone else in their particular neighborhood.

Finally, I think one of the excellent programs which arose out of LEAA was the series of programs involving the victims and the witnesses. There is no question about that. The victim has been, and probably still is, the most forgotten person in the entire system of criminal justice. Everything focuses on the defendant; very little in the past has focused on the victim and the witness. They used to wander through our courthouse without even any knowledge of what to expect or anticipate, without even a place to stop as a victim/witness room, without any alert as to what their rights were under the State victim compensation laws, with no place to turn if they were an elderly person with a problem arising from the fact they were robbed of their check or cash from the check. They do now, but these programs were instituted by LEAA. I think we need to be sure we have continued funding of those kinds of programs.

I believe an LEAA, properly administered, not only will bring forth additional new programs such as these but also aid in the reduction of crimes in our cities, as these programs have, and in our Nation as a whole.

Thank you.

Senator D'AMATO. Thank you very much, Mr. District Attorney. I certainly appreciate your taking the time and energy to be here.

I would be most candid in suggesting to you that I doubt there will be any substantial funding of those areas formerly known as LEAA programs, but I do believe that we at the Federal level have a very real responsibility. I may break with the administration in this viewpoint—it is simply not enough to say to State and local governments, "Do it on your own," even where this administration has come up with fine innovations such as the FISK program which we have run in several cities. It seems to be achieving remarkable success.

We certainly have an obligation in terms of making available facilities for prisons and encouraging additional expansion at existing facilities. We must set an example in identifying those prisoners who can be returned to society and who do not pose a danger, so that we can make better use of maximum security facilities. We must make innovations in the operation of these facilities, and, of course, innovations and coordination in terms of communications and more up-to-date methods to identify career criminals. That is one of the fine things we have accomplished.

We have a very real responsibility. It seems to me we are losing the battle. Yours may be only a temporary success, the 7 or 10 percent. I do not minimize that or denigrate it. I say thank God you have an increase in the number of arrests. Crimes seem to have abated somewhat. However, I suggest to you that I use as an analogy the temporary oil glut we have. We could be kidding ourselves if we continue to do business as usual, whether it is in terms of our energy or in terms of the criminal justice system, the laws, the enforcement, the perspective that we have. If we continue to do business as usual, we will just once and for all guarantee that this society will live with this specter of fear and criminality as part of our way of life.

Mr. SMITH. You are absolutely right. That is why I make the plea for additional programs and additional funding at all levels. We have to be willing to innovate. We have to be willing to try new programs. We have to be in there working hard.

Senator D'AMATO. Proposition 8, Mr. District Attorney, what was your disposition?

Mr. SMITH. I supported proposition 8.

Senator D'AMATO. Is it working?

Mr. SMITH. It has had some very surprising effects. It has confounded its critics, and I think it has surprised its supporters.

We were all concerned about costs, even those who supported it. As it has turned out, there has been no significant cost increase.

Also, one of the most interesting factors, all of the defense lawyers told us we will go to preliminary hearing, we will go to trial, we will have these increased penalties, and we will be trying five or six times as many cases as we do now, and our own studies indicated that there would be perhaps some increase, but the fact of the matter is that we have had a slight increase in the number of trials. The fact of the matter is that we have in fact had pleas made before the preliminary, before we get into the preliminary examination in lieu of a grand jury procedure which we utilize primarily in California.

Also, as I pointed out, the ability to charge priors without proving there was a commitment to State prison, without any time limitation, that has made it much simpler and I believe much more effective in terms of people who have had an involvement in criminal activity. It has had significant effects upon victims.

We had a bill introduced to do some of these very things 3 or 4 years ago; that is, to notify victims so they have a right to be heard at parole hearings; to notify victims before sentencing hearings. That costs some money.

We are adding a computer at not too great a cost to notify the victims. This improves our entire system of making witnesses, and we deal with 10,000 to 12,000 witnesses in preliminary court alone in San Francisco in the course of 1 year.

Therefore, I think it has had many, many positive effects. However, there are some wrinkles in terms of what the rules of evidence are. However, it will work out.

Senator D'AMATO. Thank you very much.

[The prepared statement of Mr. Smith follows:]

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TESTIMONY OF ARLO SMITH BEFORE THE SENATE SMALL BUSINESS COMMITTEE HEARINGS IN SAN FRANCISCO

November 15, 1982

Crime unfortunately pervades all levels of American society. Shopkeepers and residents in particular have become prisoners behind the bars installed in windows and doorways for their own protection. Criminals rob, sell dope, and burglarize for money until the public spends sufficient money to stop them.

Elections provide a voice for the people and recently voters spoke explicitly; protection from crime must again become a higher priority than protection for criminals. Now, State law again allows for pre-trial detention of dangerous career criminals. Now, State law provides for truth in evidence. Now, State law provides longer jail sentences for violent felons, especially recidivists and those using guns. The county jail bond initiative passed to provide more incarceration facilities so criminals are not prematurely released, merely due to overcrowding and regardless of probable future offenses. The message from the people is that California shall remain a safe environment for people and for business prosperity, rather than the haven for criminals.

But the one critical question that remains since the voters spoke out so clearly is this: Will elected officials fund law enforcement sufficiently to make the difference?

The District Attorney's office in San Francisco is staffed by outstanding lawyers, talented enough to develop innovative approaches to old problems and dedicated enough to successfully prosecute a virtual tidal wave of crime. But we're swamped, overworked, and seriously understaffed. With the lowest per capita county budget expenditure on criminal prosecution, San Francisco has the highest per capita state prison commitment in California during the last fiscal year. Between 1979 and 1982, this office has increased the number of serious felons sent off the streets to state prison by 50%. The overall reported crime rate in San Francisco dropped 1% in 1980, 2-1/2% in 1981, and about 7% in the first six months of 1982. Although the reported crime is down, the number of arrest has increased each year.

But efficiency with a small staff has been stretched to its limits; stretched to the point where our attorneys are engaged in crises management rather than well prepared, in-depth prosecution. Effective prosecution of crime takes time and that time translates into county budgeted funds. Not only do we need modern technological assistance, such as the fingerprint identification computer, but even more important, we need a sufficient number of lawyers and support staff to bring the case load within manageable proportions. Only this permits progressive cooperation between the District Attorney, the victimized public and the police rather than slight gains against the erosion of safety in the neighborhoods of this city.

Those who have studied this subject tell us what we all know from experience: Crime decreases as the certainty of arrest and the swiftness of conviction increases. In San Francisco the Mayor and the Board of Supervisors have expanded the police department to full strength and have emphasized an expanded street presence by the larger patrol force. The Bureau of Inspectors has been restored to larger strength in order to back up the patrol force. This has resulted in a larger number of complex and serious crimes being brought to the District Attorney for prosecution. In order to complement increasing productivity of the San Francisco Police Department, the office of the District Attorney must be staffed so that each case and each victim and each business entity enjoys the benefit of a searching investigation of crimes committed against them and also that each victimized individual proprietor and each small business will benefit from the full weight of the in-court prosecution teams established by this office.

The specific needs of the District Attorney's office regarding small business protection are as follows:

1. A staff of sufficient size to heavily investigate and prosecute crimes committed against small businesses; shoplifting, grand theft, embezzlement, vandalism, bad checks and credit card fraud.
2. Sufficient special expense funds to compensate the individual proprietor for the losses he suffers in coming to court for legally required appearances. The bare minimum number of appearances is two, but in actual practice it can reach three, four or even five. One appearance for the line-up identifications,

> one all-day appearance for the preliminary hearing, and two days for the trial in the superior court. Small business should not be victimized twice--once by the criminal who steals and robs, and once again by the criminal justice system that causes him to close down or hire expensive help to keep his store open.

The increased police presence provided by the Mayor combined with the above-outlined program from the District Attorney can best be coordinated in a Small Business Protection Program (or Task Force) consisting of police inspectors, District Attorney investigators from the Consumer Fraud/Business Investigation Division, Bank and store credit card security personnel and trained prosecutors specialzing in this area. At the present time the District Attorney does emphasize small business protection, but with sufficient expansion of our resources as outlined above a coordinated and unified protection program can be developed to keep small business safe in San Francisco.

There is no short cut. Each crime must be investigated and prosecuted individually to justice. Sweeping reforms have already been made. The laws are there, even a state gun law on the books for years which some local judges do not enforce. The need now is simply adequate staffing to make the criminal justice system work, especially for the small businesses who cannot afford expensive private security forces. Crimes against businesses, large and small, are largely overlooked as the priority given to violent crimes absorbs the scarce resources of a prosecutor's office. Just eighteen Assistant District Attorneys handle about 24,000 misdemeanor cases per year. Unprosecuted successful misdemeanants may find felonies a natural progression, which hurts everyone. The local prosecutor must be provided sufficient staff to positively meet this challenge.

The simplicity of my statement may disappoint those persons looking for novel, clever new solutions, but it should encourage those who see the prospects for progress so readily at hand. Concerned citizens and small business people must petition local elected officials to fund law enforcement adequately. On the federal level, a revised version of L.E.A.A. may be in order to effect the same ends.

Unlike certain cities on the East Coast, the bulwarks of law and order have not yet broken in San Francisco. We do not yet have a justice system so overwhelmed that street violence and economic crime are just taken for granted as the price of urban living. We must continue efforts and funding to prevent this from happening in San Francisco.

Senator D'AMATO. The next witness is Mr. Donald Ayer, U.S. attorney from Sacramento.

STATEMENT OF DONALD B. AYER, U.S. ATTORNEY OF SACRAMENTO, SACRAMENTO, CALIF.

Mr. AYER. Good morning, Senator and gentlemen.

Senator D'AMATO. Thank you very much for taking time from your busy schedule to be with us.

Mr. AYER. I appreciate the chance to be here and to talk a little bit about the problems of our district, which I think in some ways are perhaps a little bit different from the problems of the cities, particularly the city of San Francisco.

As the U.S. attorney in the eastern district, our office handles the crime prosecution, the Federal crime prosecution, for an area that encompasses one-half of the State of California. We include within our district a number of very major cities. I think there is a total of six standard metropolitan statistical areas. Of those metropolitan areas, we have the dubious distinction, I think, of having 4 of the 15 highest crime rate cities in the country.

However, I do not want to talk——

Senator D'AMATO. You have 4 of the 15? I thought we had 4.

Mr. AYER. You may have four, also. We have four. It surprised me when I looked up the figures. Although the cities are not that large, they are rather severe crime areas.

What I want to talk about today, though, are not the urban problems. I think those have been fairly well covered by some of the other speakers. What I would like to talk about are the problems of the 95 percent of our district which is relatively unpopulated.

Senator D'AMATO. All right.

Mr. AYER. Over the years, there has been relatively little law enforcement activity in those areas. The only agencies which have played any real major role in those areas have been the land management agencies such as the Forest Service, the National Park Service, the Bureau of Land Management. I think that probably is fitting and proper for a time when rural areas were sort of an idyllic setting, where you could go to retreat and retire from the kinds of problems we are talking about today.

The problem we are facing in our district now, and I have no doubt it is a problem across the country in similar types of areas, is that some of the worst crime problems of the cities have been transmuted and transported to areas such as ours out in the country. Of those severe problems that have been shifted out to the rural areas, the worst problem is the drug problem.

In our district, we have two particular major kinds of rural drug problems which are problems I think the Federal Government and the Federal drug authorities have to pay more attention to than they have in the past.

One of the problems is the problem of methamphetamine manufacture. The pattern with regard to methamphetamine, at least in our area, is one where organized entities, predominantly biker gangs such as the Hell's Angels, the Misfits, the Outlaws, and there are some others, will essentially control the traffic and control it in a way that results in the manufacturing that is taking place in safer, more remote, rural areas.

In the past couple years, we have begun to devote fairly significant resources to the problem. The FBI, in conjunction with the DEA and with local sheriffs and police departments, have established a task force in Sacramento which is addressing itself to that problem. They have made a number of substantial arrests, and a number of cases are in court at the present time. They believe through the intelligence that they have, that the problem is far beyond the scope that they can cover, that it reaches into areas that are difficult to detect without a greater commitment than so far has been made.

The other major drug problem in our area is one that is a little better publicized than the methamphetamine problem, and that is the marihuana cultivation problem. I think it is associated in the public mind perhaps predominantly with the coastal areas of northern California, the northern part of Mr. Russoniello's district in particular. I am here to tell you that it is a very, very, very major problem in our district. It is major to the point that we have a couple counties which are as large producers of marihuana as any in the northern district. Furthermore, and perhaps even more of a problem, we have a significant level of marihuana cultivation in virtually every single one of 34 counties within our district.

If the intelligence which has come out through various public and private sources, including the newspapers in our headquarters city and also in the Chronicle here in San Francisco, is to be believed, the marihuana which is grown here in California makes up a significant fraction, by no means a majority, but I think the last figure I saw was something like 7 or 8 percent, of the marihuana consumed in the United States. That is not a majority, as I say. However, when you stop to think about how much marihuana is being produced here and consumed here, it is a major quantity. The real point, I think, is that it is on the rise and probably will continue to be until more is done about it.

I should say that more is being done about it on the State side. My main point here is to suggest that a greater commitment of resources in Federal prosecution of those cases is appropriate. It is something we are undertaking. I think the President's Narcotics Task Force is something which should address this problem, assuming it is adopted by the Congress.

Apart from the drug problems, there are other problems related to our rural areas which I think are legitimately Federal in nature. The Federal interest in those problems arises most obviously from the fact that the problems often involve Federal land. Marihuana is a good example of a crime problem which in many cases directly occupies Federal land. It is using Forest Service land or something such as that, or BLM land, whatever it is, as its source of nourishment to grow crops. Almost half of our district is federally owned property in the form of Forest Service land, national parks, BLM lands, and, thus, it is not difficult to see that if you have any kind of real crime problem in the rural areas, much of it will be taking place on Federal lands.

I would like to recommend to the committee's consideration, if it is not already aware of it, a report by the GAO issued in March of this year entitled "Illegal and Unauthorized Activity on Public Lands." It gives a good, detailed discussion of the kinds of problems I am talking about. I do not want to repeat everything in that report, but the basic gist of it is that there are a whole range of activities which include people squatting on phony mining claims, perhaps to grow marihuana, perhaps to manufacture methamphetamines, perhaps just to live there. People who are engaging in that particular activity tend to cluster together in areas, with the result that areas like the New River drainage area of Trinity County in our district are essentially off limits to decent people, whether they be hunters or fishermen or hikers or campers. You simply cannot go there safely. I think that has become well enough known that people do not go there any more.

That is an intolerable situation. That is something about which we want to do something. Again, I have to say that the narcotics task force, if it is channeled in part in this direction, could have a major impact on those kinds of problems.

The other problems of the rural areas are much like crime problems everywhere insofar as there are people——

Senator D'AMATO. I would just like to make a comment.

I just mentioned to Mr. Harris and our committee counsel that it is frightening. It is like we have lost control.

Mr. AYER. It is exactly that way, sir. I think the real difficult thing is that it has crept up on people—the realization of what the problem is has not caught up with the reality of what the problem is. It is something that we as Federal prosecutors do not feel comfortable ignoring, and yet doing something about it is not easy. Doing something about it is at least one approach which has been considered, and it may be the only one anybody can think of. It is something akin to guerrilla warfare activity, to get into these areas and clean up the problem that is going on.

Senator D'AMATO. This statement will be included in the record in its entirety following your oral presentation.

I would like to read this one part:

Those residing there illegally have in many cases established elaborate warning systems, paramilitary networks for collective defense. They are generally armed in some way, often with automatic weapons.

I daresay that probably they have greater firepower than even that of the local law enforcement agencies.

Mr. AYER. I think in many cases that would be true.

I have two points I would like to make before closing.

There is one other area which I think is of major concern but sometimes is not given much attention. I think we have five national parks within our district, including Yosemite and a number of others. Yosemite obviously is a very well-known place and a very well-traveled place. The crime problem at Yosemite, in the summer in particular but to some degree all year around, is very much akin to the crime problems of the small cities. That in itself is not remarkable. What is different about Yosemite and about other national parks, and, indeed, about a lot of military bases, is that these are exclusive Federal jurisdiction areas. There are no other law enforcement authorities who can play a major law enforcement role in those areas, at least in terms of prosecution. It is our job or it is not going to happen.

When you consider that there is a full-time magistrate based there, you can see the extent of the commitment that is required if we are going to deal with that problem.

Senator D'AMATO. Let me ask you something which might be considered radical, but we can listen to radical ideas.

Here we have our Armed Forces. It seems to me that they have to be kept busy and we have to find missions for them. Would it really upset you, for example, if we were to have some kind of utilization of the military to assist in law enforcement in these areas?

Mr. AYER. Like at Yosemite, for example?

Senator D'AMATO. Sure.

Mr. AYER. I do not know whether it would upset me. I think one of the law enforcement problems in the rural areas is the dual function that is asked of the Forest Service, the National Park Service, and the others. Some assimilate the law enforcement component better than others, more willingly than others, but they all feel that their first obligation is to the visitors and to the land. They are the stewards of the land. They are, in a sense, the tour guides, the rangers, the people who enhance the enjoyment of the people who come to those areas.

I know the Forest Service, in particular, and to a lesser extent the Park Service, feels a tension, which I think I can understand, in the functions which they have to perform. One arm is out arresting people, throwing them in jail, which they in fact are. They are the law enforcement agency at Yosemite. The other arm is taking people by the hand and showing them the flowers, the plants, the trees, and that sort of thing. They feel uneasy about that. I guess I am a little fearful from their perspective that they might feel a bit more uneasy about a military presence, although I think it might depend on how that were handled.

Senator D'AMATO. We are saying the purpose for using military assets is to provide support in clearing out the armed camps. It would seem to me that might be a way of doing it.

How would you feel if you were in a rural area with the motorcycle gangs that come in and literally take hold? It does not have to take hold day-in and day-out, but the very fact that they can descend upon this area at any one time in and of itself must create this incredible fear, even in those who never have been victimized.

Mr. AYER. I think that idea is especially applicable in the context of marihuana cultivation. That makes a great deal of sense. The posse comitatus issue which that raises I think has been dealt with in a remotely similar context down in Florida. That option is something that I think needs to be explored further.

I should also say, I think, that the work which has been done on the marihuana cultivation problem by the joint task force—it is really joint, State bureau of narcotics enforcement and sheriffs' offices with the Federal component being really quite small; in fact, small to the point of being one agent in our district and an airplane they contribute. Those particular task forces are doing a good job. I think they are getting some help. I believe they have gotten the assistance of a couple of National Park helicopters. However, the kind of assistance you are talking about could be of significant help.

The final point I want to make before I sit down, and I do not know that I need to make it but I will anyway, is that the problems I am talking about, particularly the drug problems of the rural areas, at first blush might want to be viewed as remote problems of remote areas. Many of them are occurring 300 to 400 miles from any large city. To some degree, one might want to discount them, if not totally, at least as less important than some of the other things we are hearing about today.

I think the one lesson about narcotics and other kinds of drugs which has become engrained in most of us who are involved in law enforcement today is the relationship between those drugs and almost every other kind of crime, certainly violent crime.

It is our firm belief that the methamphetamine that the Hell's Angels are cultivating in the boondocks 100 miles north of Redding, which is 5 hours out of Sacramento where I work, that the methamphetamine they may be making up there or the marihuana that they may be growing up there is creating and contributing to a criminal subculture, first of all, and, second, to an atmosphere of criminal violence wherever it is used.

To a degree, it is simply totally unrealistic to suggest that those problems out there in our district are not the problems in San Francisco or Los Angeles or even Syracuse, N.Y.

Senator D'AMATO. Thank you very much.

Mr. AYER. Thank you.

[The prepared statement of Mr. Ayer follows:]

STATEMENT OF DONALD B. AYER, U.S. ATTORNEY, EASTERN DISTRICT OF CALIFORNIA

I am pleased to appear before this Committee and testify concerning the impact of crime on America's citizens, businesses and communities. As United States Attorney for the Eastern District of California, my office handles federal prosecution in an area encompassing one-half the State of California. Within our district we have all or part of six Standard Metropolitan Statistical Areas, and we have more than our share of urban crime. We have the dubious distinction of including within our borders the four highest crime rate cities in California, all of which rank within the top 15 metropolitan areas in the country in rate of reported major crime.

The subject I would like to discuss today, however, concerns the crime problems of the 95% of our district that is relatively unpopulated. With the exception of several agencies whose missions are not primarily law enforcement, such as the National Park Service, the Forest Service, and the Bureau of Land Management, these rural areas have historically received very little attention from federal law enforcement authorities. This hands-off approach was appropriate to an era when rural life was free from crime and corruption. However, some of the worst crime problems have now spread to some of our least populated areas.

The most severe criminal blight on our outlying areas is the same one that most severely plagues our cities -- the manufacture and distribution of drugs. A problem now of crisis proportions, is the illicit manufacture of methamphetamine, largely under the control of motorcycle gangs such as the Hells Angels, the Misfits, and the Outlaws, in widely scattered regions of the district. The operators of these labs have emigrated from more settled areas, such as the Bay Area and the Los Angeles basin, under the pressure of ever increasing police pressures in those areas, and guided by the realization that the odors of their illicit operations are less easily detected in areas away from population centers. Over the last several years numerous methamphetamine lab cases have been developed by the Drug Enforcement Administration, working with state and local authorities, and have been filed by our office and by district attorney's offices throughout the foothill areas. Under the new cooperative arrangement with D.E.A., the F.B.I. has recently begun to play an active role in these investigations.

In addition to methamphetamine manufacturing, the rural areas of Northern and Central California are havens for the cultivation of marijuana, much of it of the very potent Sinsemilla variety. While marijuana is often associated most directly in the press and by the public with the coastal areas of Northern California, it is, in fact, a problem of epidemic proportions throughout Northern and Central California. Thus far, there has been little effective prosecution of the individuals or forfeiture of the assets involved in this very lucrative business. Until recently, hardly any federal manpower has been devoted to the problem. That manpower is fully occupied in dealing with methamphetamine, and the primarily urban trafficking in cocaine and heroin.

The methamphetamine and marijuana problems are of federal concern for precisely the same reasons as those involving the imported drugs, cocaine and heroin. They generate a disabling drug dependency in a substantial portion of our citizens, and contribute huge quantities of money in support of a hidden but very powerful criminal subculture. Yet, these rural drug problems are matters of federal interest for a second reason as well. In many cases they are committed with the unwitting assistance of the federal government, by the utilization of real estate which the United States owns. Of the 87,000 square miles that our district occupies, approximately 45% is federal land. These lands, administered by the Forest Service, Bureau of Land Management, National Park Service, Bureau of Reclamation, and the military, not only are frequently used by persons committing drug offenses -- they are also involved in the commission of many other offenses as well.

A detailed discussion of these illegal and unauthorized activities on federal lands is set forth in the General Accounting Office's report on "Illegal and Unauthorized Activities on Public Lands", published March 10, 1982. That report makes clear that in addition to the drug problems, there are significant criminal problems on federal lands in the areas of timber theft, environmental damage, illegal occupation of recreational lands, and crimes against persons and property.

National Forests and B.L.M. lands in particular, are, at least during better economic times, subjected to millions of dollars in losses from stolen timber. Large numbers of people squat illegally on public lands, under the guise of mineral exploration authority provided in the federal Mining Law of 1872. These mining claims interfere with the intended recreational and other uses of much wilderness land, particularly in Northern California. They also involve various depredations of the land, including disruption of stream flow, interference with fish migration, and the dumping of toxic chemicals and non-degradable garbage.

The illicit activities on federal lands in many cases involve significant disruptions of law and order and threats to the safety of individuals. In some areas of Northern California, particularly those where marijuana cultivation is the most rampant, it is simply unsafe for decent people to venture into certain secluded areas of the public lands. Those residing there illegally have, in many cases, established elaborate warning systems, and para-military networks for collective defense. They are generally armed in some way, often with automatic weapons.

On other areas of the public lands, particularly the more frequently traveled National Parks, there are law enforcement problems akin to those of a small city. These more heavily trafficked areas of federal ownership are also commonly the ones which are subject to exclusive federal law enforcement jurisdiction. There are no other authorities with the power to enforce the criminal law on those lands, and thus federal law enforcement is the first and last line of defense.

During the past year, our office has attempted to give greater attention to these federal law enforcement concerns of the rural areas of California. We have accelerated our pursuit of major methamphetamine lab cases, and for the first time have filed several marijuana cultivation prosecutions. We have devoted a portion of our attorney resources to oversight and handling of the more significant misdemeanor and felony cases from the exclusive jurisdiction areas. And through the two Law Enforcement Coordinating Committees which have been established in our district, we have attempted to improve liaison between federal, state, and local law enforcement authorities operating in the field, in the belief that such cooperation will improve the effectiveness of the resources that are available.

A number of aspects of the Administration's crime program will, if enacted, be of great assistance in fighting corruption of our less populated areas. The Narcotics Task

Force, proposed by the President several weeks ago, would contribute desperately needed agent and attorney manpower to the efforts against methamphetamine and marijuana production. The Forfeiture Amendments, H.R. 7140, would expand the Government's powers to seize and retain assets utilized or purchased in connection with drug enterprises. More generally the Omnibus Crime Bill, S. 2572, already passed by the Senate, embodies a number of advances, including the imposition of minimum mandatory sentences for the commission of crimes with certain types of weapons, tougher sanctions against drug smuggling pilots, and amendment of the bail laws to allow preventive detention.

With the help of these and other measures, we can deal with the various types of disorder that have found their way onto our public lands and into our wilderness areas. I hope that you will conclude that these are problems meriting the attention of the Congress.

Senator D'AMATO. Our last witness is Joseph P. Russoniello, the U.S. attorney of San Francisco.

STATEMENT OF JOSEPH P. RUSSONIELLO, U.S. ATTORNEY OF SAN FRANCISCO, SAN FRANCISCO, CALIF.

Mr. RUSSONIELLO. Mr. Chairman, I am pleased to have the opportunity to address remarks to you today concerning the impact of crime on this district and what steps might be taken here and elsewhere to ameliorate the present condition.

The No. 1 crime problem here is the trafficking in and use of illicit drugs of all kinds, foreign and domestic; the growing of marihuana; the manufacture of hallucinogens such as PCP, LSD, methaqualone, quaaludes; the importation of heroin, cocaine, and marihuana. Sober law men here and elsewhere opine that as much as 90 percent of the violent crime we experience and a like amount of the property crime is attributable to drug abuse, and I agree with their estimates.

Despite recent reductions in the crime rate here, the incidence of crime is still much too high, but I am optimistic that we have the will and the opportunity to develop the tools necessary to cause real and long-lasting reductions in the crime rate.

First and foremost, the President's recent initiative to create regional Federal narcotics task forces blanketing the country will, in my opinion, effectively marshal and give structure to what has until now been an effort to deal with narcotics trafficking on an ad hoc basis.

Most importantly, if the legislation is passed by the Congress, our continuing battle against major traffickers will be significantly augmented by additional resources that are sorely needed. We have economized; we have been imaginative; we have maximized the Federal/State cooperative effort, but we are still unable to sustain a major anti-trafficking campaign, a mark more of the extent of the problem than our commitment to deal with it. The addition of agent and prosecutor personnel will be most welcome, indeed.

In the short run, our intensified cooperative effort should encourage local law enforcement that its concentration on lower level traffickers with its attendant development of informants and major trafficker linkups will complement the Federal effort and, in fact, be a significant component of the overall assault on these purveyors of pain and misery.

As a long-range goal, our renewed and expanded effort against major traffickers will result in the freeingup of local police department resources from low level narcotics trafficking, that is, "street dealing," investigations, and narcotic-related crimes, so as to permit greater attention to more traditional law enforcement obligations.

Whether we like to admit it or not, there are within this society persons who, for whatever reason or excuse, have determined to pursue the path of least resistance. They prey on the defenseless; their arrogance and ruthlessness is matched only by their cowardice. They are often armed and rarely reticent to use their weapons if to do so would, to their warped minds, frustrate detection or facilitate escape. Though faceless, they are known by their history of criminal activity and the viciousness of their crimes. Prospects for rehabilitation are nil.

Significant among their victims is the small businessman, in particular the retail merchant. Shopkeepers will soon be as rare as dinosaurs unless property and violent crime directed against them are controlled. In the best of times, operating a small store is a marginally successful enterprise. Add to his existing burdens the incredible increase in shoplifting and robbery and many are pushed over the brink into insolvency and worse.

The courts must be given the power to detain them without bail pending trial and, when they use a handgun or are armed with one in the commission of a designated felony offense, to impose a penalty commensurate with the crime aggravated by the use of or possession of a handgun.

There must, too, be a recognition that the odiousness of repeated offenses violates Federal law. They should be subject to Federal prosecution as career criminals.

If more and bigger prisons are needed to accommodate a prison population swelled by the successful prosecution of such as these and others whose crimes likewise warrant incarceration, then they should be built. At the same time attention should be given to ways in which local sheriffs' departments can better pool their available jail resources to accommodate a population that has become more violent and dangerous while insuring segregation of this group from the miscreants and inmates whose sentences are comparatively short and not likely to be repeated.

States should follow California's lead and require offenders to make restitution to their victims as a condition of probation or parole.

Overall, much more attention must be paid to the juvenile offender. For years we in law enforcement have recognized that a person does not become a criminal when he reaches adulthood; he has more often than not developed his "skills" and his character through the experimental process that we all undergo in choosing our own careers. If his earliest "hit," though relatively minor, was successful, the punishment token, our attitude indifferent, he is encouraged to press ahead on that same career track, especially when the options are uncertain or seemingly unattainable. By adulthood, he has mastered his craft convinced, even in the face of arrest and detention, that his next outing will be perfect.

The cycle must be broken, but not when the character is so well set that reversal is virtually impossible; rather, early in his teens when formation and reformation is still viable.

To sum up, I believe we can accomplish the objective of reducing serious crime in our society if:

First, we conduct an all-out assault on major drug trafficking;

Second, we identify, prosecute, and incarcerate the career criminal;

Third, we devote more time and attention to the identification of the youthful offender who shows evidence of developing an antisocial character and do the necessary to abate further refinement of this character trait.

I would be pleased to answer any questions you might have.

[The prepared statement of Mr. Russoniello follows:]

TESTIMONY

OF

JOSEPH P. RUSSONIELLO
UNITED STATES ATTORNEY
NORTHERN DISTRICT OF CALIFORNIA

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If more and bigger prisons are needed to accommodate a prison population swelled by the successful prosecution of such as these and others whose crimes likewise warrant incarceration, then they should be built. At the same time attention should be given to ways in which local sheriffs' departments can better pool their available jail resources to accommodate a population that has become more violent and dangerous while insuring segregation of this group from the miscreants and other inmates whose sentences are comparatively short and not likely to be repeated.

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Overall, much more attention must be paid to the juvenile offender. For years we in law enforcement have recognized that a person does not become a criminal when he reaches adulthood; he has more often than not developed his "skills" and his character through the experiential process that we all undergo in choosing our own careers. If his earliest "hit", though relatively minor, was successful, the punishment token, our attitude indifferent, he is encouraged to press ahead on that same career track especially when the options are uncertain or seemingly unattainable. By adulthood, he has mastered his craft convinced, even in the face of arrest and detention, that his next outing will be perfect. The cycle must be broken, but not when the character is so well set that reversal is virtually impossible; rather, early in his teens when formation and reformation is still viable.

To sum up, I believe we can accomplish the objective of reducing serious crime in our society if:

1. We conduct an all out assault on major drug trafficking;
2. We identify, prosecute and incarcerate the career criminal;
3. We devote more time and attention to the identification of the youthful offender who shows evidence of developing an anti-social character and do the necessary to abate further refinement of this character trait.

I would be pleased to answer any questions you might have.

Senator D'AMATO. I would be remiss if I did not say that I think the people of California and the criminal justice system are, indeed, fortunate to have two such dedicated and capable law enforcement officials, such as yourself and U.S. Attorney Ayer. I compliment both of you for your very fine presentations.

Mr. RUSSONIELLO. Thank you.

Senator D'AMATO. I cannot help but agree and yet I wonder about point No. 3, where you say we should devote more time and attention to the identification of the youthful offender who shows development of an antisocial character.

I think we have seen this problem with youthful offenders repeatedly in large urban centers. Identifying them and correcting their problems is easier said than done.

However, let me put you to the test, so to speak. How would you go about it?

Mr. RUSSONIELLO. I think that psychology has been very convincing in suggesting that it is able to predict the conduct of adolescents from its observations of them at the earliest years of intelligence, 3, 4, 5, 6, or 7 years.

I have no doubt, based on my experience as an assistant district attorney in San Francisco for 8 years and prior to that as an agent in the FBI, that there are certain characteristics—I hate to put it in terms of a checklist that if you get 12 of the 15 you, therefore, qualify—but there are indicia that we know would suggest to us that a 12-year-old is going to be a problem to us at age 18 unless something remedial is done.

Not to denigrate the hard work of juvenile probation officers who are overworked and underpaid and extremely committed to their jobs, we have too often taken the view that the juvenile offender is primarily the responsibility of his parents or his family and only secondarily and incidentally a concern to the State.

We have too often taken the view, as State officials, perhaps overall as a Government, that the home environment and the school are 100 percent responsible for the guidance, training, and giving of direction to these young people, and that our primary interest as law enforcement officers is to sit back as moderators and observers, to insure that the due process requirements for protecting the rights of these juveniles are preserved. That is foolish in my view because we must recognize that it is the traditional role of the State to be a partner with the family in raising a child. All of our laws of child custody, all of our laws of human health and resources, recognize the role the State has to play. We must take it one step further and guarantee that in the area of potential violence, potential adverse impact on the society as a whole, that the State assume a very active role to see that the cycle is broken as early as possible.

One of the suggestions, to be very specific about it, if I had my druthers and I were running a program for youthful offenders, would be to try to attack the problem which gives rise to the antisocial behavior.

To be specific as to what that is, it is boredom. It is frustration in the recognition by a young person growing up in this society that perhaps the American dream as promoted, and perhaps promoted by us, that things will be better for you than they were for your parents, that there is a pot of gold at the end of the rainbow of hard work and commitment, that there is leisure and luxury which await any who strive. This may not necessarily be the case any more.

What we should be promoting and what we should be telling young people is that each has a role to play within the society in general, one that affords some comfort but which requires some commitment, some responsibility, the assumption of obligation in order to obtain some of the privilege. In order to inculcate these ideas in that young person who may be frustrated, who may feel bored, who may be subject to incredible peer pressure, that in analyzing his total environment at that early stage of his development we provide him with alternatives to the ghetto, to provide him with alternatives to his father's drunkenness and his mother's promiscuity; to give him clean air, to give him an opportunity to pursue a myriad of career objectives which are different from the ones which are the most attractive to him—which in the ghetto are dope dealing and pimping—we have an obligation to restructure, as it were, that environment for that young person.

I suspect, as was the case in the thirties with the CCC camps from which marvelous and historic cases of genius and performance and good citizenship arose, that we will begin to experience the same kinds of renewed commitment of young people to a mainstream role in society. However, until we do that, dealing with it or expecting prosecutors—my colleague, Mr. Smith, from the DA's office, Mr. Ayer, or I, or any number, however committed, to begin to deal with the problem at adulthood at the age of 18, and to expect that we, wardens, police officers, prosecutors, parole officers, probation officers, courts are capable at that juncture of redirecting his character, making him productive, is naive.

Senator D'AMATO. I agree. I will not add anything further because the task is so awesome, but yet so necessary. You are absolutely right. A 12-year-old who is already assaulting classmates, those even older than himself, and extorting money from them, one who is a discipline problem, who is discarded and cut adrift, is a walking time bomb that will absolutely go off. The few youthful offenders who will make it in the future will be very small in number. Chances are that these people will become part of the growing group of criminals who in early adulthood find themselves with numerous arrests and detentions at various youth centers, where they become more astute and more skilled in their criminal trades.

I think, as you say, that it is naive to expect that in later years we will reform them because that just has not been the case in the past in our experience with these youths.

I am very impressed with the depth of your understanding of this problem. This comes from more than just a prosecutorial kind of insight which you would be expected to have. I think, again, that the people of California are particularly fortunate in having you in their criminal justice system. You come forward and say, "Look, you really have problems here." By the time you get them, there is little in the way of redemption. Certainly this typifies the kind of problem we have to deal with when these young people reach adulthood.

This has been an extremely illuminating hearing session for me and for the staff. I want to thank my chief counsel, who has done an incredible job and who also worked with my staff in setting this up.

I also want to thank Jeff Harris from the U.S. Attorney General's Office, the Deputy Associate U.S. Attorney General.

I want to thank my staff and all who have participated for making it possible for us to have this hearing. I hope it will result in some meaningful contribution, no matter how insignificant, in dealing with the totality of the overwhelming problems we have here, problems which are overwhelming our Nation and its people. Crime is eroding the confidence of people in government and in our Nation and is eroding the basic fiber of our society. Our citizens have little respect for our officials, and I think they are right, right because we have continued to permit this situation to become greater and more dangerous and more widespread. People will lose confidence in public officials who shirk their responsibilities and look for quick expedient fixes, indeed in many cases, make nothing more than symbolic political speeches and gestures.

People lack appreciation for those people they elected, who have the responsibility to lead in difficult situations and in difficult times, and who must come up with solutions that are not so popular but which, hopefully, will deal with the crime problem.

We now stand in recess with my thanks to all those who have participated.

[Whereupon, at 12:45 p.m., the committee recessed, to reconvene at the call of the Chair.]